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11  
12 SUPERIOR COURT OF STATE OF ARIZONA  
13 COUNTY OF YAVAPAI

14 STATE OF ARIZONA,

15 Plaintiff,

16 vs.

17 JAMES ARTHUR RAY,

18 Defendant.

CASE NO. V1300CR201080049

**DEFENDANT JAMES ARTHUR RAY'S  
SUPPLEMENTAL BRIEF REGARDING  
MOTION IN LIMINE (NO. 1) TO  
EXCLUDE EVIDENCE OF ALLEGED  
PRIOR ACTS PURSUANT TO ARIZ. R.  
EVID. RULE 404(B) AND 403**

1     **I.     INTRODUCTION**

2             Arizona’s *Terrazas* rule charges courts with a critical gatekeeping role: a judge must  
3     exercise “extreme care” before admitting evidence of a defendant’s prior acts, and must  
4     determine that the State has satisfied the rigorous clear-and-convincing standard in proving that  
5     the prior act occurred *and* that the defendant committed it. *State v. Terrazas*, 189 Ariz. 580, 584  
6     (1997). The clear and convincing bar is a “heightened evidentiary standard” reserved for those  
7     matters which, although not requiring proof beyond reasonable doubt, involve “life-or-death  
8     issues” or other extremely weighty matters. *In re B.S.*, 205 Ariz. 611, 615 (App. 2003);  
9     *Rasmussen by Mitchell v. Fleming*, 154 Ariz. 207, 224 (1987). These include the decision  
10    whether a minor can obtain an abortion without parental consent, *In re B.S.*, 205 Ariz. at 615;  
11    whether medical treatment for an incompetent person should be terminated, *Rasmussen*, 154 Ariz.  
12    at 223; and whether parental rights can be terminated, *see, e.g., Raymond F. v. Arizona Dept. of*  
13    *Economic Sec.*, 231 P.3d 377, 381 (App. 2010). The imposition of the clear and convincing  
14    standard, the United States Supreme Court has explained, “ensures that the judge will take special  
15    care” in deciding the question at issue. *Ohio v. Akron Center for Reproductive Health*, 497 U.S.  
16    502, 518 (1990).

17            Moreover, as this court acknowledged at the November 10 hearing and the State  
18    conceded, the *trial judge* must find that the evidence *does* satisfy the high clear-and-convincing  
19    threshold—not that a hypothetical jury *could* make such a finding. *See Terrazas*, 189 Ariz. at 584  
20    (“[B]efore admitting evidence of prior bad acts, *trial judges* must find that there is clear and  
21    convincing proof both as to the commission of the other bad act and that the defendant committed  
22    the act.”) (emphasis added); *State v. Vigil*, 195 Ariz. 189, 191 (App. 1999) (same); *see also*  
23    Comment to 1997 Amendment to Arizona Rules of Evidence 404 (interpreting *Terrazas* as  
24    holding that “the relevant prior bad act must be shown to have been committed by the defendant  
25    by clear and convincing evidence” in order to be admissible in a criminal case). The State has  
26    fallen far short of the required showing.

27            The State alleges that “Defendant had conducted prior sweat lodge events, and knew  
28    participants in those prior sweat lodge events had suffered *adverse medical problems* during the

1 sweat lodge events,” including a specific instance of “*heat stroke*” in 2005. State’s Response to  
2 MIL No. 1 at 2:1-12, 3:4-6 (emphasis added). It seeks to “introduce at trial testimony from past  
3 participants in the sweat lodge who became ill or *suffered signs of hyperthermia*.” State’s Rule  
4 15.1(b)(7) Notice of All Prior Acts Pursuant to Rule 404(b), as disclosed in Yavapai County  
5 Attorney Sheila Polk’s Letter of June 24, 2010 (attached hereto as Exhibit A).

6 Specifically, the State alleges that instances of “heat stroke,” “hyperthermia” or “medical  
7 distress” occurred at the sweat lodges organized by Mr. Ray’s company, James Ray International  
8 (“JRI”), in 2005, 2007, and 2008:

- 9 • At the JRI sweat lodge ceremony in 2005, “one participant, Daniel Pfankuch, was  
10 described as unconscious. He was eventually transported to the hospital where he was  
11 diagnosed with heat stroke.” State’s Response at 3:4-7.
- 12 • At the JRI sweat lodge ceremonies in 2007 and 2008, some unnamed “participants  
13 suffered physical distress,” State’s Response at 4:10-11, “medical distress” or  
14 “hyperthermia,” *see, e.g.*, Reporter’s Partial Transcript (“RT”), Nov. 9 at 170:12-14,  
15 Nov. 10 at 134:13-17, and Nov. 16 at 117-118, 134:1-2.

16 Naming every exception enumerated in Ariz. R. of Evid. 404(b), the State’s theory is that these  
17 alleged medical problems or “*injuries* ... prove Mr. Ray’s motive, opportunity, intent,  
18 preparation, plan, knowledge, or absence of mistake or accident in the pending case.” State’s  
19 Response at 6:9-12 (emphasis added). The State has failed to meet its burden of proof in every  
20 significant respect.

21 *First*, the State’s evidence does not show, let alone to a clear and convincing standard, that  
22 the prior “acts” occurred. The State seeks to prove the existence of specific medical illnesses—  
23 “heat stroke” and “hyperthermia”—yet provided *no* expert testimony or competent medical  
24 evidence from which the Court could conclude that these medical illnesses in fact occurred. As  
25 the Court noted at the hearing, the State’s lay witnesses were not qualified to offer medical  
26 opinions. *See, e.g.*, RT, Nov. 9 at 170:15-22.

27 In addition, the State’s evidence simply does not bear out its account of the alleged prior  
28 heat-related injuries. As to the only prior incident that the State has alleged with any

1 specificity—that Daniel Pfankuch suffered heat stroke in 2005—the State’s allegation is refuted  
2 by Mr. Pfankuch’s medical records, the State’s own medical examiner’s expert statement  
3 (introduced by the defense), Mr. Pfankuch’s own statement, and the State’s only non-hearsay  
4 witness regarding the incident, Amayra Hamilton, who testified that Mr. Pfankuch had a spiritual  
5 out-of-body experience but that “[h]is physical [condition] seemed to not be impacted.” RT, Nov.  
6 9 at 112–113, 118:2.

7 As to alleged heat illnesses in 2007 and 2008,<sup>1</sup> the photographs speak for themselves, as  
8 this Court noted numerous times. *See* RT, Nov. 16 at 129:16-17, 134:5-9, 136:3-7. Contradicting  
9 the State’s allegations that the end of the 2008 sweat lodge was a “war zone” or a scene of  
10 “carnage” in which “participants were unconscious, vomiting, and ‘out of their minds,’” State’s  
11 Response at 4:13-16, the forty-five photographs taken by Debby Mercer and Cynthia Manner  
12 depict participants resting, cooling off, smiling, laughing, taking photographs and even striking  
13 poses for the cameras. *See* Exhibits 34 to 78. And the State’s *own witness*, after describing the  
14 alleged horrors of the 2007 and 2008 sweat lodges, testified that the injuries in 2009 were a first:  
15 “I mean, obviously it was different because nobody had been burned before. Nobody had said  
16 they’re having a heart attack before, ***and nobody had been pulled out unconscious before***”  
17 October 8, 2009. Debby Mercer, RT, Nov. 10, 119:3-9 (emphasis added).

18 Moreover, the State’s vague allegations of injuries or illnesses at the 2007 and 2008 sweat  
19 lodges provide no names or diagnoses for the Defense to meet. For that reason alone, the State  
20 has failed to carry its burden. Indeed, when the State’s witness identified two unnamed women in  
21 the photographs as unconscious, RT, Nov. 9 at 170:3-6, 171:10-14 and Exhibit 23, the Defense  
22 proved with additional photographs and the testimony of Caren Wendt that the two women—one  
23 of whom is Christine Jobe—were in fact not unconscious, let alone in any distress, but smiling  
24 and gesturing with their thumbs up. *See, e.g.*, RT, Nov. 9 at 208:17-209:3, 209:18-210:11-13 and  
25 Exhibits 41 and 45; RT, Nov. 16 at 63:10-65:21, 72:6-22. By the end of the hearing, the State  
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27 <sup>1</sup> Ted and Debby Mercer claimed the scenes at the 2007 and 2008 JRI sweat lodges were “basically the  
28 same.” *See, e.g.*, Ted Mercer, RT, Nov. 9 at 160:20-161:18, 170:19-23.

1 shifted its version of the facts, focusing instead on an unnamed woman in green shorts whom the  
2 County Attorney (but no witness) stated was in “medical distress.” RT, Nov. 16 at 119:15-18,  
3 121:5-19. The State has also not overcome the contradictory testimony and statements of  
4 witnesses who, sitting in the midst of the scene, observed no signs of illness. Nor has the State  
5 provided an evidentiary basis that would link the ambiguous “medical distress” to a risk of death.

6 Additionally, to the extent there is *any* evidence supporting the State’s allegations, it  
7 comes principally in a form that is entitled to minimal weight and insufficient to meet a clear and  
8 convincing standard. The State has submitted voluminous transcripts of unsworn statements that  
9 feature double and triple hearsay, lack foundation, and provide the court no meaningful  
10 opportunity to evaluate reliability or witness credibility. Such evidence is insufficient to carry the  
11 State’s burden where, as here, the facts asserted in the unsworn statements are disputed by the  
12 Defense and contradicted by other evidence.

13 *Second*, even if the State had proven that prior heat-related injuries occurred—and it has  
14 not—the State has failed to articulate a permissible legal purpose for the evidence under Rule  
15 404(b). The State’s first theory—that the prior incidents prove Mr. Ray’s “intent, knowledge, and  
16 absence of mistake” because they made Mr. Ray aware of the risk of death, State’s Response at  
17 7:1-8:8:7—is counterfactual. There is no evidence that Mr. Ray knew that any previous  
18 participant had suffered alleged heat-related injuries at all, let alone was on notice of any risk of  
19 death. Indeed, the State has taken pains to emphasize that Mr. Ray left sweat lodge ceremonies  
20 immediately after they ended and did not follow up with participants regarding alleged medical  
21 issues, in an attempt to improperly paint Mr. Ray as callous. The State’s second theory, that the  
22 prior heat-related injuries prove Mr. Ray’s “motive and plan,” State’s Response at 8, is unfounded  
23 and puzzling. This is not a specific intent crime, and motive is not in issue. *See State v. Garnic*,  
24 209 Ariz. 96, 99 n.4 (App. 2004) (“A reckless offense is one form of ‘unintentional’ offenses.”);  
25 *see also* RT, Nov. 10 at 17:23-18:2) (this Court noting that “intent is not an element technically of  
26 the charge[s]” alleged). Moreover, there is no logical connection between the alleged injuries and  
27 the profit motive the State describes.

1           *Third*, even assuming (for argument only) that the prior-act evidence had some probative  
2 value, it would be vastly outweighed by the substantial prejudicial effect of introducing a litany of  
3 ill-defined “incidents” aimed primarily at portraying Mr. Ray as a careless or callous person. The  
4 Arizona Supreme Court has warned that the balance under Rule 403 usually weighs *against*  
5 admitting prior-act evidence. That admonition applies with special force here in light of the  
6 vaguely defined nature of the alleged prior acts, their tenuous connection to any permissible  
7 purpose, and the high likelihood that a jury might impermissibly use the character evidence to  
8 conclude Mr. Ray is a bad person and therefore more likely to have engaged in the charged  
9 offense. *See State v. Aguilar*, 209 Ariz. 40, 42 (2004) (en banc).

## 10       **II.     ARGUMENT**

### 11           **A.     The State has failed to prove by clear and convincing evidence that “heat** 12               **stroke,” “hyperthermia,” or “medical distress” occurred at any of the prior**               **JRI sweat lodges.**

13           “[F]or prior bad acts to be admissible in a criminal case, the profferer must prove by clear  
14 and convincing evidence that the prior bad acts were committed and that the defendant committed  
15 the acts.” *Terrazas*, 189 Ariz. at 582. The State alleges but has wholly failed to prove by clear  
16 and convincing evidence that “heat stroke,” “hyperthermia,” or “medical distress” occurred at any  
17 of the prior JRI sweat lodges.

#### 18                   **1.     Systemic flaws render the State’s evidence insufficient to satisfy the** 19                   **clear and convincing standard under Arizona case law.**

20           Before addressing the specific shortcomings of the State’s proffer and theory, two  
21 systemic flaws in the State’s evidence warrant attention. First, most of the State’s evidence, by its  
22 nature, is inadequate under the clear and convincing standard. The twenty-seven transcripts and  
23 recordings of hearsay declarants that the State submitted to the court are rife with problems.  
24 There are numerous transcription errors that alter the content of the hearsay statements. And the  
25 transcripts are overwhelmingly composed of statements that lack foundation, offer improper lay  
26 opinion, improperly disparage Mr. Ray’s character, and/or contain multiple layers of hearsay.  
27 Furthermore, the statements are untested: the Defense was deprived of the opportunity to cross-  
28 examine the hearsay declarants, and because of the sheer volume of the transcripts, it is

1 impossible in this proceeding to address individually the myriad flaws in the unsworn  
2 statements.<sup>2</sup>

3 This sort of evidentiary submission cannot meet the clear and convincing standard set  
4 forth under Arizona law. To be sure, recent case law permits a trial court making a preliminary  
5 ruling regarding prior acts to *consider* hearsay statements. But the guiding principles of those  
6 cases reveal that the State's submission here—a deluge of untested, out-of-context hearsay—is  
7 insufficient as a matter of law to satisfy the clear and convincing bar.

8 In *State v. Aguilar*, the Arizona Supreme Court held that hearsay statements in grand jury  
9 transcripts were not sufficient to prove that the victims in a sexual assault case had consented to  
10 prior sexual contact. *Aguilar*, 209 Ariz. at 50. The credibility determination necessary to  
11 resolving the dispute “could not have occurred” where “the court neither heard from the victims  
12 nor was presented with any prior testimony from them.” *Id.* Although the Court of Appeals later  
13 held in *State v. Lebrun* that specific hearsay statements—audio and video recordings from victims  
14 of child molestation—were sufficient to support the required clear-and-convincing finding, the  
15 *Lebrun* court was careful to note the ways in which the situation differed from *Aguilar*. *State v.*  
16 *LeBrun*, 222 Ariz. 183, 187 (App. 2009). “[I]n contrast to the situation in *Aguilar*, the trial court  
17 heard the victims’ own statements and *first-person accounts* of what they observed and perceived  
18 regarding defendant’s conduct.” *Id.* (emphasis added). “Moreover,” the trial court invited the  
19 defendant to present evidence disputing the victims’ statements, but he “offered nothing”—and  
20 “[a]s a result, there was *no material issue of fact* as to the nature of the acts that the trial court  
21 had to resolve in determining admissibility.” *Id.* (emphasis added).

22 Under the principles set out in these Arizona cases, the State’s proffer here is insufficient.  
23 Unlike in *Lebrun*, much of the State’s proffer here consists *not* of first-hand accounts based on  
24 personal observation, and there are disputed material issues of fact before the Court. Rather than  
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26 <sup>2</sup> Indeed, each of these twenty-seven hearsay statements was obtained over the telephone. Thus, even the  
27 interviewer could not describe the witness’ physical demeanor or conduct in answering questions—factors  
28 commonly considered by a fact finder in assessing credibility—or even affirm the identity of the witness.  
Such limitations underscore the unreliability of these unsworn hearsay statements.

1 first-hand accounts, the transcripts and recordings the State has submitted feature hearsay upon  
2 hearsay, often without explanation as to the foundation for the hearsay declarant's belief. Such  
3 excerpts do not permit a meaningful credibility determination, let alone permit the court to  
4 *compare* the relative credibility of a host of conflicting hearsay declarants. *See State v. Uriarte*,  
5 194 Ariz. 275, 283 (App. 1998) (Gerber, J., concurring and dissenting in part) (in evaluating  
6 credibility, court "assign[s] greater value to the most credible testimony based on perceptible  
7 aspects of witness demeanor"). Yet a credibility comparison is necessary, because unlike *Lebrun*  
8 and as in *Aguilar*, the hearsay statements proffered by the State conflict on key facts. *See*  
9 *Aguilar*, 209 Ariz. at 50 (in a case of disputed testimony, "[t]he resolution of th[e] issue . . . turns  
10 largely on the credibility of the witnesses"); *Uriarte*, 194 Ariz. at 283 (Gerber, J., concurring and  
11 dissenting in part) ("When witnesses proffer contradictory testimony, the trier of fact assesses the  
12 quality of the testimony by weighing its credibility. "). Moreover, unlike both in *Aguilar* and  
13 *Lebrun*, where only a few witness statements were at issue, the State here has inundated the court  
14 with twenty-seven witness statements, many of which have little foundation and only glancing  
15 relevance. And, the State does not even intend to call all of these hearsay witnesses at trial.<sup>3</sup>

16 This is not the sort of evidence the court can rely upon to find the clear and convincing  
17 burden satisfied. As the U.S. Supreme Court has explained, an evidentiary burden like the "clear  
18 and convincing" standard cannot "be satisfied in the first instance" until "the factfinder . . .  
19 evaluate[s] the raw evidence, finding it to be sufficiently reliable and sufficiently probative to  
20 demonstrate the truth of the asserted proposition with the requisite degree of certainty." *Concrete*  
21 *Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern*  
22 *California*, 508 U.S. 602, 622 (1993). The Court echoed this principle numerous times during the  
23 hearing, noting that it cannot give weight to evidence of questionable reliability. *See* RT, Nov. 9  
24 at 25:19-22 ("I don't think there is any personal knowledge of that. I'm not going to consider  
25 that."); RT, Nov. 9 at 51:20-23 ("There is a lack of foundation. And if it's significant, I can't

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27 <sup>3</sup> See Letter from Sheila Polk to Truc Do, 11/22/10 (attached as Exhibit B). The State withdrew Daniel  
28 Pfankuch, Joshua Frederickson, Megan Frederickson, Susan Naves, Michelle Goulet, and Caren Wendt as  
witnesses for trial.



1 assess it much weight, give it much weight, if I don't have some foundation."); RT, Nov. 9 at 20-  
2 24 ("It really is hearsay again. I'm going to consider the weight that should be given. I really  
3 can't give weight to that. .... I'm not going to consider the hearsay answer."). In short, the bulk  
4 of the State's evidence provides the court with no meaningful opportunity to evaluate reliability  
5 or witness credibility, and cannot as a matter of law satisfy the clear and convincing burden.

6 Second, the State's hearsay evidence suffers from an additional and independently fatal  
7 flaw. The State simply has not put in sufficient evidence that supports its allegations, given the  
8 substantial record and non-hearsay evidence contradicting the State's account. The clear and  
9 convincing standard, it bears noting, sets a high bar for the State, demanding the strength of  
10 evidence usually reserved for "life or death" or other grave matters. *In re B.S.*, 205 Ariz. at 615.  
11 Where the record contains substantial contradictory evidence, as it does here, the clear and  
12 convincing standard becomes virtually unattainable. That is because, by definition, if the  
13 evidence is in equipoise, or if the State has introduced support for a proposition only by a  
14 preponderance of the evidence, the State has failed to meet its burden. These basic principles  
15 sink the State's attempt here. As set forth below, the State has failed to come forward with *any*  
16 supportive evidence for most of its allegations. Indeed, much of the State's own evidence refutes  
17 the State's allegations. To the extent that any evidence does corroborate the State's allegations of  
18 heat stroke and heat illnesses, the testimony is so vague, and the allegations so flatly contradicted  
19 by other evidence, that the evidence is far short of the clear and convincing threshold.<sup>4</sup>

## 20 2. The 2003 Sweat Lodge<sup>5</sup>

21 The State's evidence establishes that 40 people participated in the 2003 sweat lodge  
22 without any incident. As to the 2003 sweat lodge, the State introduced the testimony of Amayra  
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24 <sup>4</sup> The analysis that follows does not address the evidence the State introduced regarding the charged  
25 conduct or the 2009 sweat lodge. Such evidence is beyond the scope of the *Terrazas* hearing, which  
26 requires the State to prove *prior* acts. As the Court noted, the State's inquiry into the 2009 event went "far  
beyond" what the Court believed "would be the normal scope of a 404(b) proceeding." RT, Nov. 9 at  
192:5-11.

27 <sup>5</sup> Although the State has provided notice only of allegations related to the 2005, 2007 and 2008 sweat  
28 lodges in its 15.1(b)(7) disclosures and Response to MIL No. 1, the State argued in its opening statement  
on November 9, 2010 that it sought to introduce evidence of all prior JRI sweat lodges from 2003 to 2008.

1 Hamilton and the unsworn hearsay statements of Tere Gingerella (Exhibit 101), Marilyn Moss  
2 (Exhibit 106), and Martha Stem (Exhibit 115). Amayra Hamilton testified that 40 people  
3 participated in the 2003 sweat lodge and she was unaware of any problems during the 2003  
4 ceremony. RT, Nov. 9 at 14:2-10. Tere Gingerella stated that: "The first two years [2003 and  
5 2004] there really, there had been no incidents. I mean it was fine, it was actually a great  
6 experience for everybody. I mean it was really a great experience." Exhibit 101 at 172.<sup>6</sup>  
7 Marilyn Moss stated that, to her knowledge, no one had any "health risk reactions" in the 2003  
8 sweat lodge ceremony. Exhibit 106 at 603. Martha Stem stated that "a guy did leave, he got up,  
9 he got up and left, he was a big man, ... he got up and ... left because he didn't feel well, he  
10 wasn't sweating, so he was getting overheated so he left, *no problem*." Exhibit 115 at 972.

### 11 3. The 2004 Sweat Lodge

12 The State's evidence establishes that 12 people participated in the 2004 sweat lodge  
13 ceremony and, again, without any incident. Here, the State's evidence consisted of the testimony  
14 of Amayra Hamilton and the unsworn hearsay statements of Tere Gingerella (Exhibit 101),  
15 Joshua Frederickson (Exhibit 97), and Susan Naves (Exhibit 107). Amayra Hamilton testified  
16 that 12 people participated in the 2004 sweat lodge and she was unaware of any problems during  
17 the 2004 ceremony. RT, Nov. 9 at 15:5-9. Gingerella stated that there were no incidents at the  
18 2003 or 2004 sweat lodges. Exhibit 101 at 172. Joshua Frederickson testified that he participated  
19 in the 2004 sweat lodge and no one got hurt. Exhibit 97 at 831.

20 Although the State proffered the hearsay statement of Susan Naves, it will not call Naves  
21 as a witness at trial.<sup>7</sup> For that reason alone, this Court should strike and not consider her  
22 statement. However, even if the Court could properly consider Naves' hearsay statement, it adds  
23 nothing. In a 13-minute interview, that Naves initiated with the Sheriffs, she offered one vague  
24 *opinion* about her experience at the 2004 sweat lodge: "I felt like I was going to die in that sweat  
25 lodge and we were strongly encouraged not to leave over and over and over again and I said you

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26 <sup>6</sup> All page references to the State's hearsay statements (Exhibits 93 to 119) and Mr. Pfankuch's Medical  
27 Records (Exhibit 12) are to the bate stamp number.

28 <sup>7</sup> See Exhibit B and footnote 2, *supra*.

1 know what I don't care if I am supposed to leave or not, I don't want to die so I left. And I mean  
2 I wasn't criticized for it verbally but he was doing things that I thought were very dangerous."  
3 Exhibit 107 at 379. No follow-up questions were asked to shed any light on what appears to be a  
4 melodramatic, not literal, statement.

#### 5                   **4.       The 2005 Sweat Lodge**

6           The State alleges that Daniel Pfankuch was "unconscious" and "diagnosed with heat  
7 stroke" as a result of his participation in the 2005 sweat lodge ceremony. State's Response at 3:4-  
8 7. The State has failed to prove either allegation with clear and convincing evidence. In  
9 particular, the State's showing is deficient because: (a) the State has submitted no expert  
10 testimony or competent medical evidence to even explain heat stroke, let alone establish that Mr.  
11 Pfankuch suffered heat stroke; (b) Mr. Pfankuch's medical records *disprove* the State's  
12 allegations; (c) the State's only non-hearsay witness contradicts the State's allegations; and (d)  
13 the eleven hearsay statements discussing the 2005 sweat lodge ceremony carry little, if any,  
14 evidentiary weight.

##### 15                           **a.       The diagnosis of heat stroke is a matter for expert testimony,** 16                           **which testimony the State has failed to produce.**

17           First, heat stroke is a medical diagnosis and a medical term of art far beyond "common  
18 experience." It refers to a specific, physical state marked by clinically determined symptoms.  
19 See Dr. A.L. Mosley's Statement, Exhibit 131 at 14-31. Thus, the diagnosis of heat stroke is a  
20 matter for expert testimony. See generally 1 Arizona Practice § 702:3 ("Expert testimony is  
21 necessary when common experience does not allow the jury to correctly decide the matter."). But  
22 the State has not introduced any expert testimony or other medical evidence from which this  
23 Court could find by clear and convincing proof that Mr. Pfankuch actually suffered heat stroke.  
24 The evidence the State did submit—the unqualified opinions of lay witnesses—cannot, as a  
25 matter of law, prove Mr. Pfankuch suffered from heat stroke, no more than lay witnesses could  
26 establish facts necessary to terminate medical treatment for an incompetent person under the  
27 same, rigorous clear and convincing standard. See *Rasmussen*, 154 Ariz. at 223. As this Court  
28 made clear during the hearing, the Court cannot give weight to medical speculation offered by lay

1 witnesses with no medical expertise. *See, e.g.*, RT, Nov. 9 at 170:19-24 (sustaining an objection  
2 to the State's attempt to elicit testimony on "medical issues" from a witness who "doesn't have  
3 medical training and is not a doctor."). The State's failure to submit competent medical evidence  
4 is, by itself, grounds for concluding that the State has failed its burden of proof.

5 **b. Daniel Pfankuch's medical records disprove the State's**  
6 **allegation that he suffered heat stroke, or even hyperthermia.**

7 Second, Mr. Pfankuch's medical records establish that he did not suffer heat stroke and  
8 was never diagnosed with heat stroke. Dr. Mosley, the State's medical examiner, has explained  
9 that a medical diagnosis of heat stroke and hyperthermia requires specific and objective clinical  
10 symptoms, including primarily a rectal temperature of 42° Celsius or 107° Fahrenheit. Exhibit  
11 131 at 18:19-24, 19:21-23, 20:16-21:1. Mr. Pfankuch's tympanic (ear) temperature upon  
12 admission to the Emergency Room at the Verde Valley Medical Center was 36.4° Celsius or  
13 97.5° Fahrenheit. Exhibit 12 at 2220 and 2225. Far from suffering heat stroke or hyperthermia,  
14 Mr. Pfankuch's temperature was *below the normal* of 98.6° Fahrenheit. Moreover, heat stroke is  
15 a life-threatening condition, yet Mr. Pfankuch was aroused by paramedics at the scene after only  
16 "a few minutes," admitted to the hospital as a "non-urgent" case, and was "full of sand and was  
17 able to walk on his own and use the shower in the Decon Room to clean up prior to assessment in  
18 the ER." Exhibit 12 at 2214, 2219. The ER doctor who examined him reported that Mr.  
19 Pfankuch had no current symptoms and felt "back to normal." *Id.* at 2210. It is not surprising,  
20 then, that nowhere in Mr. Pfankuch's medical records do the words "heat stroke" or  
21 "hyperthermia" even appear.

22 **c. Amayra Hamilton's testimony contradicts the State's allegation**  
23 **that Mr. Pfankuch was unconscious.**

24 Third, the State's only non-hearsay witness, Amayra Hamilton, contradicts the State's  
25 allegation that Mr. Pfankuch was "unconscious." Hamilton testified that Mr. Pfankuch never  
26 *physically* lost consciousness or became unresponsive. *See, e.g.*, RT, Nov. 9 at 20:2-16 (He was  
27 "not necessarily unconscious but not conscious of his environment. ... He was not unconscious  
28

1 because he was moving.”) and 111:23-112:2 (“he was physically able to move”).<sup>8</sup> Instead,  
2 Hamilton, who believes she can channel and communicate with dead people, *id.* at 114:14-  
3 115:24, believes Mr. Pfankuch had an “out-of-body experience.” *Id.* at 112:3-8. That is, “[h]is  
4 spirit was not connected with his body.” *Id.* at 112:14-16. Whatever reliability Hamilton’s  
5 testimony might have as to the precise location of Mr. Pfankuch’s spirit, it is decidedly not  
6 probative medical evidence, nor does it aid the State’s allegation that Mr. Pfankuch was  
7 unconscious. To the contrary, Hamilton testified that Mr. Pfankuch’s *spiritual*, out-of-body  
8 experience never impacted his physical condition. RT, Nov. 9 at 112:3-21, 117:12-118:2 (“His  
9 physical [condition] seemed to not be impacted.”). And in the end, Mr. Pfankuch “was very  
10 cheerful” the next morning and said “he had a great experience.” RT, Nov. 9 at 26:11-19.

11 **d. The State’s Eleven Hearsay Witnesses**

12 In light of Mr. Pfankuch’s medical records and Hamilton’s testimony, the State has failed  
13 to carry its burden. The State cannot show by clear and convincing evidence that Mr. Pfankuch  
14 was unconscious and suffered from heat stroke when both the medical records and the State’s  
15 only non-hearsay witness say otherwise. The State’s attempt to resurrect its allegations by  
16 introducing the unsworn hearsay statements of eleven lay witnesses is misplaced. *See Aguilar*,  
17 209 Ariz. at 50 (grand jury transcripts were insufficient to meet clear and convincing standard  
18 because they did not permit the requisite credibility determinations). The deficiency of this  
19 approach is even more glaring given that the State will not call three of these eleven hearsay  
20 witnesses at trial, including the alleged “victim”—Daniel Pfankuch—himself.<sup>9</sup> In any event, as  
21 set forth below, the hearsay statements are so deeply flawed that they are entitled to minimal  
22 weight, if any.

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25  
26 <sup>8</sup> Indeed, Mrs. Hamilton noticed Mr. Pfankuch because he “was gesturing wildly ... making noise,” RT,  
27 Nov. 9 at 19:19-23, and kicking and throwing punches at other participants, *id.* at 109:23-110:5. Mr.  
28 Pfankuch’s threatening behavior required other participants to grab him to prevent him from harming other  
people. *Id.* at 110:15-18.

<sup>9</sup> See Exhibit B and footnote 2 *supra*.

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Duhaime also states that “[t]he only reason [Pfankuch] didn’t die [was] because [Duhaime] poured water, I ran cold water on his head soon enough that *his brain didn’t get bigger than the skull.*” Exhibit 95 at 419. “There was no doubt in my mind that he nearly died,” Duhaime emphasized. *Id.* at 427. Yet the paramedic’s report indicates that Mr. Pfankuch was aroused within a few minutes and was fully alert and able to take an unassisted shower even before his examination in the emergency room. *See* Exhibit 12 at 2214. Indeed, Mr. Pfankuch was admitted on “non-urgent” status and expressed that he was “wanting to go home.” *Id.* at 2214, 2219.

**(2) Bruce Duncan's Statement (Exhibit 96)**

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1 not a comfortable feeling. I was not impressed at all. ... He must have been breathing ... he  
2 were just lying there passed out ... he was saying I want to die, I want to die because he wanted  
3 to be reborn." Exhibit 96 at 2261. No questions were asked of Duncan to determine whether his  
4 statement was based on his own personal knowledge. In the rest of the interview, Duncan spent  
5 casting disparaging remarks about Mr. Ray's character.

6 **(3) Tere Gingerella' Statement (Exhibit 101)**

7 Tere Gingerella, who completed the 2005 sweat lodge ceremony, states that "as far as the  
8 sweat lodge itself, I would say that there was really no; there was really no chaos within the sweat  
9 lodge itself to tell you the truth." Exhibit 101 at 171. Regarding Mr. Pfankuch, Gingerella states  
10 that he "was literally being extremely confrontational with people; going up to people, he hit a  
11 gentleman in the face, punched him." *Id.* at 172. "I'm not a doctor, I can't really tell you," she  
12 adds. "The only thing I know from like what I have studied myself is that he obviously was in a  
13 different level of consciousness than all of us. ... I mean obviously the heat got to him. It's like  
14 you know when you have a fever, you start to hallucinate. So I think Daniel started  
15 hallucinating." *Id.* As is clear from her own statement, Gingerella's speculation regarding Mr.  
16 Pfankuch's medical condition lacks foundation.

17 **(4) Amanda Huffnung's Statement (Exhibit 103)**

18 Amanda Huffnung's statements regarding Mr. Pfankuch are entirely vague and inaccurate.  
19 She recalls that *two* people were taken to the hospital for treatment, not just Mr. Pfankuch. And  
20 she does not recall Mr. Pfankuch's identity; she believes that there was a couple from Boise (the  
21 Pfankuchs) and another man who was "fairly dehydrated and he ended up staying overnight."  
22 Exhibit 103 at 1345, 1346. She also recalls, incorrectly, that the Vision Quest occurred after the  
23 sweat lodge ceremony. *Id.* at 1346.

1                                   **(5) Daniel Pfankuch's Statement (Exhibit 111<sup>10</sup>)**

2           Daniel Pfankuch himself states that he had an "out of body experience." Exhibit C at 5:12-  
3 6:8. "I feel like just like I left, left this world and went somewhere else," he explains. He went to  
4 "such a peaceful place and so you know where I went I mean it was so wonderful ... it's hard to  
5 come back to this world where you know people are killing each other, people are hurting each  
6 other, people are not loving each other, and that's not the place I was." *Id.* at 5:25-28.

7           Pfankuch's statement also reveals that he suffered no physical damage from the incident.  
8 He recalls—*incorrectly* according to the medical records—that the hospital told him he had "heat  
9 stroke and severe dehydration," *id.* at 6:23-26. He had no follow-up visits with doctor after the  
10 sweat lodge to address the event, *id.* at 6:9-10, but the doctors he has seen since then indicate that  
11 nothing is wrong with him. *Id.* at 8:15-17. "I lead a very active lifestyle," he explains, "and I  
12 have been injured playing soccer and other things." *Id.* He is not aware of any damage,  
13 permanent or otherwise. *Id.* at 6:12-15. The State's intention to *not* call Mr. Pfankuch for trial<sup>11</sup>  
14 to establish what it alleges happened to Mr. Pfankuch exposes the very weakness of their  
15 allegation.

16                                   **(6) Michelle Pfankuch's Statement (Exhibit 112<sup>12</sup>)**

17           Michelle Pfankuch also believes that her husband had an out of body experience. She  
18 states Mr. Pfankuch came out of the sweat lodge and was doing a "hand stand and he actually  
19 walked on his hands," Exhibit D at 2:25, and that he "took this gal and was going to punch her."  
20 *Id.* at 3:3-4. "He was not in his body," she explains. Mrs. Pfankuch's account also contradicts  
21 David Duhaime's account, and is consistent with the medical records indicating that Mr.  
22 Pfankuch was not anywhere near death: He "didn't want to come back, he he was, anyway after  
23  
24

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25 <sup>10</sup> Given that the State's transcription of Daniel and Michelle Pfankuch's statements are incomplete and  
26 contain numerous errors, the Defense attaches hereto its transcript of Daniel Pfankuch as Exhibit C and  
Michelle Pfankuch as Exhibit D.

27 <sup>11</sup> See Exhibit B and footnote 2 *supra*.

28 <sup>12</sup> See footnote 10 *supra*.



1 *he gained his composure* and stuff he finally did but *by that time the ambulance had come* and  
2 you know we went to the hospital.” *Id.* at 3:22–27 (emphasis added).

3 (7) **Marilyn Moss’ Statement (Exhibit 106)**

4 Marilyn Moss sat next to Mr. Pfankuch during the sweat lodge ceremony and noticed  
5 nothing wrong with him, nor did she hear Mr. Pfankuch say anything was wrong. Exhibit 106 at  
6 614 (“No and believe me I thought of this because he was right next to me.”). In a portion of the  
7 interview not transcribed in the State’s transcript, Moss refers to Mr. Pfankuch’s incident outside  
8 the sweat lodge as “his little episode.” She states that “Daniel was standing up and just walking  
9 around and just swinging at people.” *Id.* at 616.

10 (8) **Mickey Reynolds’ Statement (Exhibit 113)**

11 Mickey Reynolds has a *paid* contract with CBS to produce a 48 Hours investigation for  
12 the “Early Morning Show”, and has appeared on numerous television shows to do interviews  
13 about his experience with Mr. Ray. Exhibit 113 at 4006-07. But neither the Court nor the  
14 Defense can make an adequate credibility determination about Reynolds from only a transcript.

15 Reynolds participated in the 2005 JRI sweat lodge and told Detective Diskin that he  
16 “would never step foot in another one with that guy [Mr. Ray], *id.* at 128, yet he returned in 2008  
17 to volunteer as a JRI Dream Team member.<sup>13</sup> *Id.* at 4002. As to the Pfankuch incident,  
18 Reynolds’ statement is contradicted by two others. Reynolds stated that people inside the 2005  
19 sweat lodge “started to freak out ... they’re like we want out of here and [Mr. Ray’s] like ‘No,  
20 you need to sit down!’” *Id.* at 129. Yet, Tere Gingerella stated that “as far as the sweat lodge  
21 itself, I would say that there was really no; there was really no chaos within the sweat lodge itself  
22 to tell you the truth.” Exhibit 101 at 171. Even Marilyn Moss, who sat next to Mr. Pfankuch,  
23 stated she did not notice or hear of any problems with Mr. Pfankuch during the ceremony.  
24 Exhibit 106 at 614.

25  
26  
27 <sup>13</sup> Directly refuting the testimony of Debby and Ted Mercer, Reynolds—who has been more than willing  
28 to speak with anyone about his negative views of Mr. Ray—failed to mention that any incidents occurred  
at the 2008 JRI sweat lodge.

1 Reynolds further stated that Mr. Pfankuch came out and “thought he was a karate guy and  
2 was throwing, ... trying to kick everybody and was going crazy and then ended up blacking out.”  
3 Exhibit 113 at 129. Although Reynolds is clearly not qualified to render a medical opinion,  
4 Detective Diskin asked Reynolds whether Mr. Pfankuch was “diagnosed with something.” *Id.* at  
5 4008. Reynolds answered, “No it’s nothing that ... anybody get[s] diagnosed” with. *Id.* He went  
6 on to describe Mr. Pfankuch’s experience as: When a person leaves their body and doesn’t  
7 return, “they kinda feel insane, they go through insanity for awhile. ... what’s happened to  
8 Daniel is he’s never really been grounded back into himself. And since that hasn’t happened he’s  
9 lost, it’s like having a lost child wandering around, just ‘like what do I do?’” *Id.* at 4008-09.

10 **(9) Joshua Frederickson’s Statements (Exhibits 97-98)**

11 Joshua Frederickson stated he participated in the 2004, 2005, 2006 and 2009 JRI sweat  
12 lodges. Exhibit 97 at 820. Before the 2009 JRI sweat lodge, Mr. Frederickson had never seen  
13 anyone unconscious as a result of a sweat lodge. As to the 2005 sweat lodge, Frederickson stated  
14 that he would *not* describe Mr. Pfankuch as an incident where someone got physically hurt. *Id.* at  
15 831. Rather, Frederickson stated that Mr. Pfankuch “came out of the lodge and ... was like a  
16 violent drunk where he was like yelling and not paying attention kind of belligerent.” *Id.* at 831.  
17 Frederickson “was with Daniel and just trying to help calm him down. ... he was you know  
18 pretty belligerent, he was swinging, swinging his fist” and Frederickson was trying to physically  
19 restrain Mr. Pfankuch from harming others. *Id.* at 839. Frederickson never described Mr.  
20 Pfankuch as passing out or becoming unconscious.

21 **(10) Megan Frederickson’s Statements (Exhibits 99-100)**

22 Megan Frederickson stated she has participated in six JRI sweat lodges from 2004 to  
23 2009. She completed the entire ceremony in all six sweat lodges without any incident to herself.  
24 Exhibit 99 at 1258. As to the Pfankuch incident in 2005, Frederickson stated she did not  
25 personally observe it, but only heard about it from Joshua Frederickson. *Id.* 1259; Exhibit 100 at  
26 1139.

1 (11) Patrick O'Brian's Statement (Exhibit 108).

2 According to Patrick O'Brian, Mr. Pfankuch "obviously had a vision." Exhibit 108 at  
3 661. Mr. Pfankuch was "basically non-cooperative ... when they tried to rinse him off, he was  
4 yelling and he was an average you know what we would call a standard man, 170 to some  
5 hundred pounds ... maybe close to 275, he was able to push some of us around pretty readily."  
6 *Id.* O'Brian stated that he is "not medically trained, so [he] can't enter an opinion" regarding  
7 what Mr. Pfankuch may or may not have experienced. *Id.* He would leave "that[] to the  
8 doctors." Yet even he stated that the Pfankuch incident "wasn't an issue." *Id.* His statement that  
9 Mr. Pfankuch "needed to be treated for dehydration," *id.*, lacks foundation.

10 5. The 2006 Sweat Lodge

11 There is no question that the State has also failed to prove that heat-related illnesses  
12 occurred at the 2006 sweat lodge. Instead, the State's evidence establishes that 42 or 43 people  
13 participated in the 2006 sweat lodge ceremony without any incident whatsoever. Hamilton  
14 testified that Angel Valley built the 2006 sweat lodge to hold 50 people and there were 42 or 43  
15 people in the JRI sweat lodge ceremony that year. RT, Nov. 9 at 30:12-17. She intentionally  
16 watched the sweat lodge ceremony and saw all the participants come out of the sweat lodge. *Id.*  
17 at 33:1-4, 99:8-15. Hamilton did not see any problems with the participants, including anyone  
18 coming out sick, vomiting, passed out, or requiring medical attention. *Id.* at 99:20-100:5.  
19 Everything was "fine" in 2006. *Id.*

20 Additionally, the State proffered the unsworn hearsay statements of Marilyn Moss  
21 (Exhibit 106) and Martha Stem (Exhibit 115) as to the 2006 sweat lodge. Marilyn Moss  
22 volunteered as a Dream Team member in the 2006 sweat lodge event, but did not go inside.  
23 Exhibit 106 at 622 and 624. She mentioned that someone had a sunburn but nothing else. *Id.* at  
24 106 at 625-26. Martha Stem participated in the 2006 sweat lodge ceremony and mentioned only  
25 one person who "got up and left and he actually came back, but he got up left for a little bit and  
26 then came back. And again **no problem**, but other than that everybody stayed all the way  
27 through." Exhibit 115 at 972 (emphasis added).

1                               **6.     The 2007 and 2008 Sweat Lodges**

2               Similarly, the State has failed to prove by clear and convincing evidence the vague and  
3 nonspecific “medical distress” that it alleges occurred at the 2007 and 2008 JRI sweat lodge  
4 ceremonies.

5                               **a.     The State has failed adequately to identify the alleged injuries.**

6               As an initial matter, it is difficult for the Defense to discern and meet the State’s account  
7 of the 2007 and 2008 illnesses. The State alleges that “participants suffered physical distress”  
8 and “adverse medical problems” in 2007 and 2008. State’s Response at 2:10-12 and 4:10-11.  
9 Regarding 2007, the State alleges that “two participants [not identified by name] describe people  
10 vomiting and seeing at least one person [not identified] who was unconscious.” *Id.* at 4:12-13.  
11 Regarding 2008, the State’s argues that:

12               “[P]articipants describe a scene that can only be seen as a foreshadowing of the events of  
13 2009. Using terms like “carnage,” “war zone,” and “triage unit,” participants have told  
14 detectives participants were unconscious, vomiting, and “out of their minds.” At least one  
15 participant [not identified] indicated she thought she was going die, another [not  
16 identified] indicated that in addition to one person [not identified] being unconscious,  
17 “about 20 people were “sick, overheated and throwing up.”

18               State’s Response at 4 (original quotation marks not omitted).

19               These vague assertions, which do not provide the names of the alleged injured participants  
20 or the alleged medical diagnoses, foreclose the State’s attempt at the outset: the State cannot satisfy  
21 the demanding clear and convincing standard regarding an alleged injury without identifying or  
22 even describing who was injured and what medical condition they experienced. *See Terrazas*, 189  
23 Ariz. at 584 (“Because of the high probability of prejudice from the admission of prior bad acts,  
24 the court must ensure that the evidence against the defendant directly establishes ‘that the  
25 defendant took part in the collateral act,’ and court must “[‘]shield the accused from prejudicial  
26 evidence based upon highly circumstantial inferences.”’ (quoting Rodriguez, *The Admissibility of*  
27 *Other Crimes, Wrongs or Acts Under the Intent Provision of Federal Rule of Evidence 404(B)*, 48  
28 *U. Miami L.Rev.* 451, 457 (1993))).

1                                   **b.       The State's non-hearsay evidence is not credible.**

2           The State called five witnesses to testify regarding the 2007 and 2008 sweat lodges. The  
3 testimony of these witnesses reveals obvious bias and pervasive inconsistencies. The testimony  
4 cannot be relied upon.

5                                   **(1)       Amayra Hamilton**

6           First, the testimony revealed that Amayra Hamilton is herself embroiled in litigation  
7 related to the 2009 sweat lodge. She has sued Mr. Ray for compensatory and punitive damages.  
8 *See* Exhibit 80. In addition, she has been sued by the families of the decedents and other  
9 participants in the 2009 sweat lodge, including Stephen Ray, Sidney Spencer, Sandra Andretti,  
10 Dennis Mehravar, Beverly Bunn, Brandy Rainey-Amstel, and Sean Ronan. *See* RT, Nov. 9 at  
11 88:16-25.

12           In addition, Ms. Hamilton's testimony is in direct conflict with other testimony, and  
13 evidence indicates she may have perjured herself. Mrs. Hamilton testified, as she averred in her  
14 signed affidavit submitted in defense of the civil lawsuits filed against her by the decedents and ill  
15 participants from 2009 (Exhibit 79), that she did not know anything about alleged problems  
16 occurring at any JRI sweat lodges before 2009, other than the 2005 Pfankuch incident. She further  
17 testified that Debby and Ted Mercer "never told me" that people were not feeling well after the  
18 2008 sweat lodge. RT, Nov. 9 at 104:3-8. Again, she testified:

19                   Q: In 2008 are you aware that there were some problems with the sweat lodge ceremony  
20 performed by James Ray?

21                   A: At the time I was not. In 2009 I was not. Today I am.

22           RT, Nov. 9 at 145:11-15. Mrs. Hamilton's testimony is directly contradicted by both Ted and  
23 Debby Mercer. Ted Mercer testified that he told Amayra Hamilton "many times" that people  
24 were in "distress" at the 2008 JRI sweat lodge. RT, Nov. 9 at 205:11-16, 207:16-18. Debby  
25 Mercer testified that "Amayra Hamilton was there" at the 2008 sweat lodge and therefore Mrs.  
26 Mercer testified she did not need to tell Mrs. Hamilton about her observations of the ceremony.  
27 RT, Nov. 10 at 88:1-6. According to Debby Mercer, "Amayra Hamilton knows exactly what  
28 goes on in James Ray sweat lodges." *Id.* at 89:1-2. The irreconcilable differences between the

1 testimony of Amayra Hamilton and the Mercers raise serious questions about the veracity of Mrs.  
2 Hamilton, the Mercers, or all three witnesses.

3 **(2) Mark and Vicky Rock**

4 The testimony of Mark and Vicky Rock cannot be separated from Mrs. Hamilton's bias.  
5 The Defense's cross-examination of Mrs. Rock at the hearing revealed a material fact never  
6 disclosed to the Defense: that Mr. and Mrs. Rock moved to Mrs. Hamilton's Angel Valley Retreat  
7 Center on August 21, 2010, and have since been living there free of charge. Vicki Rock, RT, Nov.  
8 9 at 178:22-179:8,179:9-19; Mark Rock, RT, Nov. 9 at 214:23 and RT, Nov. 10 at 25:24-26:12.  
9 Moreover, Amayra Hamilton was the impetus for the Rocks' recent involvement in the case: she  
10 arranged for the Rocks to be interviewed by Detective Diskin on September 21 of this year. Mark  
11 Rock, RT, Nov. 10 at 25:24-26:12. Prior to that, the Rocks made no statements regarding  
12 problems at the 2008 sweat lodge. Mark Rock was interviewed on October 8, 2009 and never  
13 mentioned any problems at the 2008 sweat lodge. *See* Exhibit 124. Vicki Rock did not come  
14 forward until nearly a year after the event, and only at the arrangement of the Hamiltons.

15 **(3) Ted and Debby Mercer**

16 Finally, the testimony of Ted and Debby Mercer at the hearing was both internally  
17 inconsistent, at odds with their prior statements, and refuted by the photographs. It is thus entitled  
18 to little, if any, weight. Immediately after the tragedy of October 8, 2009, Ted and Debby Mercer  
19 were interviewed by Detective Pamela Edgerton. At no point in their first statement to law  
20 enforcement contemporaneous with the October 8 tragedy did the Mercers describe the  
21 unconscious, vomiting, or bloody participants in prior JRI sweat lodges to which they testified on  
22 direct examination at the *Terrazas* hearing. Indeed, on cross-examination, Ms. Mercer revealed  
23 that "nobody had been pulled out unconscious before" the 2009 JRI sweat lodge. RT, Nov. 9 at  
24 119:4-9. This testimony is irreconcilable with Mr. and Mrs. Mercer's testimony on direct  
25 examination that they had pulled people out unconscious from the prior sweat lodges. *See e.g.*,  
26 Ted Mercer, RT, Nov. 9 at 154:4-12, 208:17-209:4 (identifying an unconscious woman he pulled  
27 out of the 2008 sweat lodge in Exhibit 23); Debby Mercer, RT, Nov. 9 at 229:5-18.

1 The Mercers' testimony features other troubling inconsistencies. Debby Mercer testified  
2 that she heard people inside the 2009 sweat lodge screaming people were "unconscious" two or  
3 three times which caused her a lot of concern. RT, Nov. 10 at 28:24-29:5. But when Detective  
4 Edgerton asked Debby Mercer on October 8, 2009 at the hospital, "Did you notice anybody during  
5 the actual sweat lodge ... did you hear anybody in there having any specific problems?," Debby  
6 Mercer answered "You hear moaning and groaning and people breathing hard and then you know  
7 James will tell you to slow your breathing down ... but *yeah, that's normal.*" Exhibit 122 at 14:9-  
8 14 (emphasis added).

9 Moreover, while their in-court testimony essentially blamed Mr. Ray for the October 8  
10 tragedy, it is beyond dispute that the Mercers told Detective Edgerton that very night they believed  
11 the tragedy was caused by the wood they burned to heat the stones used in the ceremony. RT,  
12 Nov. 10. at 119-123 and Exhibits 122-123. This possible mistake by the Mercers was serious  
13 enough to compel Detective Diskin to advise Debby Mercer to get a lawyer. Id. at 124:22-125:15.

14 c. Evidence in the record refutes the State's account of the 2007  
15 and 2008 sweat lodges.

16 Moreover, substantial evidence in the record *refutes* the State's account of the 2007 or  
17 2008 injuries. Detective Diskin himself told a witness he was interviewing that "there seems to be  
18 quite a bit of discrepancy as far as what happened in 2008." See Exhibit 93 at 4618. These  
19 discrepancies in the record prevent the State from fulfilling its clear and convincing burden with  
20 respect to the 2007 and 2008 sweat lodge ceremonies.

21 In addition to Debby Mercer's testimony, referenced above, that "nobody had been pulled  
22 out unconscious before" the 2009 JRI sweat lodge, several witnesses describe a calm and  
23 unremarkable scene at the 2008 sweat lodge. Caren Wendt, sitting in the middle of the alleged  
24 scene, did not see anyone in any sort of medical distress. When Wendt left the sweat lodge after  
25 the third round, she held hands with 10 to 15 people, standing and "holding space for people  
26 inside" the sweat lodge ceremony. The scene outside the sweat lodge was not chaotic, RT Nov. 16  
27 at 64:2-22, and Wendt did not see anyone throwing up, in convulsions, hallucinating, or crying out  
28 of pain, *id.* at 71:2-72:5.

1 Furthermore, evidence at the hearing refuted the statements by Ted Mercer, and echoed by  
2 the State, that 2008 participant Christine Jobe was unconscious or in medical distress. On direct  
3 examination, Mr. Mercer testified that Exhibit 23 depicts what he saw as “people in distress in  
4 2008.” RT, Nov. 9 at 170:3-6. “Well, some of the people that are laying on the ground aren’t just  
5 laying on the ground because they’re tired. I can remember some of these people, especially this  
6 person [identifying a woman later identified by Wendt as Christine Jobe, RT, Nov. 16 at 72:6-22]  
7 in the blue shirt there.” *Id.* at 171:10-14 On cross-examination, Mr. Mercer again pointed to  
8 Christine Jobe and testified she was unconscious when Mr. Mercer pulled her out. *Id.* at 208:17-  
9 21, 209:3-3. Yet Mr. Mercer agreed that this was the same woman giving a thumbs up sign in  
10 Exhibit 41, *id.* 209:18-209:21, the same woman smiling at the camera in Exhibit 45, *id.* 209:24-  
11 210:4, and the same woman sitting up in another photograph and talking to another person, *id.*  
12 210:5-10.

13 Caren Wendt’s testimony confirmed that Christine Jobe is the woman lying on the ground  
14 in Exhibit 23, RT Nov. 16 at 72:6-22, and also confirmed that Ms. Jobe was never unconscious,  
15 inside the sweat lodge or outside. Wendt returned to the sweat lodge after round 5 and sat next to  
16 Ms. Jobe. RT Nov. 16 at 63:10-64:1, 64:23-65:14. Wendt and Jobe were fine: “We were talking  
17 to each other, laughing and joking.” *Id.* at 65:15-17. And Jobe was certainly not unconscious. *Id.*  
18 at 65:18-21, 66:18-24. To the contrary, at the end of the ceremony, “we all crawled out, and we  
19 went out and sat outside. And they hosed us off with water and gave us water. And we went  
20 outside. And Chris and I are good friends. Christine. She sat in the mud. We all sat in the mud.  
21 And they put water on us and everything. ... That was it.” *Id.* at 65:22-66:7, 66:10-17. Nor was  
22 the person next to Jobe in medical distress; no one around her was in medical distress. *Id.* at 68:18-  
23 22. The State interviewed Jobe twice, on October 8 and 22, 2009, but did not submit her  
24 statements into evidence.

25 **d. Scattered hearsay assertions cannot revive the State’s allegations.**

26 Given the lack of credibility of the state’s non-hearsay witnesses and the record evidence  
27 that contradicts the State’s account of the 2007 and 2008 sweat lodges, the State has failed to carry  
28



1 its burden as to the injuries it alleges at these ceremonies. The hearsay assertions the State  
2 introduced into evidence cannot revive its failed evidentiary showing. For example:

3 **(1) Michelle Goulet (Exhibit 102)**

4 Michelle Goulet's statement does not aid but disproves the State's allegations about the  
5 2008 sweat lodge. She stated that she didn't see anyone having problems or "medical distress or  
6 anybody unconscious or anybody having any kind of issues" during or after the 2008 sweat lodge  
7 ceremony. Exhibit 102 at 3980.

8 **(2) Angela Riemma (Exhibit 114)**

9 Angela Riemma stated she did not feel medical attention was needed given what she saw  
10 after the 2008 sweat lodge ceremony. Riemma said: "They seemed out of it but they were able to  
11 rally and got together for dinner ... we all had dinner together. And we did some hiking in the  
12 next day but they were still a little bit confused or kind of in a brain fog state but nothing that  
13 was, we didn't seem to concerned about it at the time." Exhibit 114 at 391. She stated: I was "a  
14 little concerned about my friend, and [dream team member] reassured me that they would be okay  
15 and as it turned out *they were*." *Id.* at 392 (emphasis added). Asked "do you feel that they should  
16 have been given medical aid?," Riemma answered: "I think if I really felt that way at the time I  
17 probably would have forced the issue. ... they pulled out of it by dinner, they were able to make  
18 dinner, we had conversations at dinner, they just seemed the little bit out of it. *But physically they*  
19 *seemed okay*." *Id.* at 393. Riemma's statement does not aid but contradicts the State's  
20 allegations, and other unsworn hearsay declarants and the Mercers.

21 **(3) Sheryl Stern (Exhibit 117)**

22 Sheryl Stern stated there were no problems whatsoever at the 2007 sweat lodge.  
23 Regarding the 2007 sweat lodge ceremony, Stern said "that was a good event. It went pretty  
24 smoothly." Exhibit 117 at 995. She repeated: "In 2007 it was actually pretty good I thought." *Id.*  
25 "2007 was good, people were good, most people made it through the sweat lodge, no issues. ...  
26 They all were you know they were all fine." *Id.* at 996. "They were all conscious and  
27 everything." *Id.* at 997.

Regarding 2008, Stern stated that “nobody was unconscious, they were just really, really weak.” *Id.* at 1001. And contrary to the Mercers’ insinuations of pressure by Mr. Ray, Stern stated that “people were coming and going and getting their water and then going back in and James allows that.” *Id.* at 998. No one was stopped from leaving. *Id.* at 1000.

**(4) Nancy Olgelvy (Exhibits 109-110)**

Nancy Olgevy told Detective Diskin that she believes Mr. Ray has supernatural powers: “I knew [Mr. Ray] was doing something kind of other worldly. ... I mean it was almost like he was casting out evil spirits out of people, which sounds a little woo-woo but I watched him do it.” Exhibit 109 at 1299. Olgevy, leaving the 2008 sweat lodge ceremony twice and returning after each exit, also believes she saw Jesus and Mary. Exhibit 109 at 1297-1298. The Court and Defense know nothing further about Ms. Olgevy to determine her competence and credibility.

**(5) Susan Isaacs (Exhibit 104)**

Susan Isaacs' statement about the 2007 sweat lodge ceremony appears, from the transcript of her unsworn statement, to be entirely based on hearsay, not personal knowledge. Isaacs attended the 2007 sweat lodge ceremony and in her October 27, 2009 telephonic interview with a detective, she stated: "I didn't know people had been unconscious two years before. And I know last year [which she did not attend], there was stuff that went on, I had friends that were there last year." Exhibit 104 at 323. Isaacs indicates throughout her statement that she has spoken to other participants from various years about Mr. Ray's sweat lodges. For example, Isaacs stated that she talked to "Nancy" (presumably Olgevy) a week and half before her interview and was told by Nancy about a woman who had allegedly been unconscious and submerged in cool water, a fact never mentioned by Olgevy herself. *Id.* at 321-22. Isaacs further stated that she "heard" that a man had seizures after the Vision Quest in 2008. Despite these red flags, the detective made no attempts to discern whether Isaacs' story about the 2008 sweat lodge was based on hearsay or personal knowledge. *See id.* at 321-22.

**(6) Cynthia Manner (Exhibit 105)**

Cynthia Manner is writing a book about Mr. Ray and her experience at the 2008 JRI sweat lodge. About the book, she explains: “I’m not looking at it for profit and I’m not going for the 15

1 minute fame thing. This is strictly a moral obligation to mankind. ... My story is as I said  
2 unique.” Exhibit 105 at 1383. Manner repeatedly expressed her eagerness in being a State’s  
3 witness, even asking Detective Diskin: “Do you guys sit with us to kind of a do a test thing to like  
4 you know the role play that’s involved and what the other attorney would do you know to  
5 (inaudible)?” *Id.* at 1395. She also asked what to do if Larry King called and invited her on his  
6 show. *Id.* Again, the Court and the Defense cannot question this witness about the obvious areas  
7 of bias and credibility because of the form in which the State elected to introduce her statement.

8 Moreover, Manner’s description of the 2008 sweat lodge ceremony is flatly contradicted  
9 by the photographs she eventually provided to the detectives. Exhibits 27 to 70. She stated: It  
10 was “carnage after the sweat lodge when we got out.” “I was passed out on the ground.” Exhibit  
11 105 at 1382. “There was people vomiting, there was feces.” *Id.* at 1389. “I just can’t even stand  
12 up, my eyes are rolling in my head” when another participant asked to take pictures of her. *Id.* at  
13 1385. Yet Manner is seen in her own photographs standing, walking, sitting up, or eating a  
14 watermelon—always with a smile. *See* Exhibits 27, 37, 40, 44, 54, 60, 62, 65 and 69.

15 **B. Even If Proven, the Alleged Acts Would Not Be Admissible Under Arizona**  
16 **Law.**

17 Even if the State could prove the specific medical conditions that it has alleged, its attempt  
18 would fail as a matter of law. The alleged prior acts do not satisfy any of the exceptions listed in  
19 Rule 404(b).

20 **1. The alleged prior acts are not admissible to prove Mr. Ray’s “Intent,**  
21 **Knowledge, and Absence of Mistake” in 2009.**

22 The State argues that the prior acts are admissible to prove Mr. Ray’s intent, knowledge,  
23 and absence of mistake: that the alleged injuries in prior years made Mr. Ray aware that his  
24 conduct in 2009 created a substantial and unjustifiable risk of death. *See* State’s Response at 7.  
25 For this theory to be tenable, the State must link Mr. Ray’s conduct in prior years to the alleged  
26 injuries, must show that Mr. Ray had knowledge of the specific injuries alleged, and must provide  
27 some basis for linking those injuries to death. Yet the State offered *no evidence whatsoever* that  
28

1 Mr. Ray knew participants had suffered “heat stroke” in 2005 or “medical distress” in 2007 and  
2 2008, let alone knew that such injuries established a risk of death.<sup>14</sup>

3 Instead, the testimony indicates that Mr. Ray did *not* have the requisite knowledge. The  
4 State repeatedly emphasized that it was Mr. Ray’s practice to leave sweat lodge ceremonies  
5 shortly after their conclusion, and that Mr. Ray did not make follow-up inquiries regarding the  
6 medical condition of allegedly injured participants. Ms. Polk argued:

7 “That at the conclusion of the ceremony in 2005 Mr. Ray leaves, and inside is still  
8 one of the participants. ... What Mr. Ray did at the conclusion of the 2005 sweat  
9 lodge was he left. He went outside and was not taking care of his participants.

10 That is not only similar but that’s identical to what happens in 2009 when the  
11 sweat lodge ceremony concludes. Mr. Ray leaves ....”

12 RT, Nov. 9 at 16:25-17:11.

13 Moreover, the evidence does *not* establish that Mr. Ray “knew participants in those prior  
14 sweat lodge events had suffered adverse medical problems” as the State alleges. State’s Response  
15 at 2:10-11. For example:

- 16 • Amayra Hamilton testified that Mr. Pfankuch had a spiritual experience, that Mr. Ray  
17 was not present to see it, and that she did not tell Mr. Ray about any specific “injury.”  
18 RT, Nov. 9 at 20:17-22. Specifically, Hamilton was asked: “To your knowledge, did  
19 James Ray ever do any follow up to determine what medically happened to Daniel  
20 Pfankuch?” She answered, “No, no that I am aware of. Neither did I know what  
21 happened to Daniel any further.” *Id.* at 142:22-143:1.
- 22 • Ted Mercer testified that he never spoke to Mr. Ray about the alleged “number of  
23 people in distress” at the 2007 or 2008 sweat lodges. *Id.* at 175:8-11.

---

24  
25  
26 <sup>14</sup> To be sure, the State *argues* that “Duhaime, Reynolds and Hamilton will testify that following the  
27 [2005] incident they confronted Defendant and told him what he was doing was dangerous and he needed  
28 to have medical professionals there for future events.” State’s Response at 3. But the State elected not to  
call Mr. Duhaime or Mr. Reynolds, and their unsworn hearsay statements certainly do not show that Mr.  
Ray “knew” that Mr. Pfankuch had suffered from heat stroke (which did not occur).

- Vicki Rock testified she did not tell Mr. Ray about Barbara Waters' alleged condition, nor does she know whether anyone else had. *Id.* at 192:19-25.

Furthermore, the State has not shown how the specific injuries it alleges put Mr. Ray on notice of a link between his own conduct and the risk of death. Surely the State is not arguing that *any* "distress," no matter its medical significance, creates a notice of the risk of death. Yet the State's record is entirely silent as to what relationship might exist between the symptoms it alleges and death.

*State v. Woody*, 173 Ariz. 561 (App. 1992), a case involving the very different context of drunk driving, cannot bridge the factual and logical gaps in the State's theory. In *Woody*, the court held that for a prior bad act to be admissible to prove a *mens rea* of reckless indifference to human life, the prior act must "permit the jurors to infer either that the defendant intended the act in question or had knowledge of its consequences." *Id.* at 563. *Woody* involved a conviction for driving while intoxicated, and the "facts of appellant's prior conviction" for DUI "were sufficiently similar" to the charged conduct "for the jurors reasonably to conclude that as a result of it, appellant was made aware of the risks he posed to others in driving while under the influence." *Id.* But in *Woody*, unlike the present case, there was no question but that the defendant had knowledge of the prior act—his own admitted drunk driving. Furthermore, in *Woody*, unlike the present case, there is no doubt as to the risk of death posed by the defendant's prior act. See generally *State v. Huffman*, 137 Ariz. 300, 303 (App. 1983) ("No one needs to be told" that drunk driving is inherently dangerous.).

The other cases the State relies upon are farther afield. In *State v. Rose*, 121 Ariz. 131 (1978), the defendant's showing of false identification to a police officer an hour before his arrest on kidnap-burglary charges—*specific intent crimes*—was evidence of preparation that "discredit[ed] a claim that the act was done by accident or mistake and sheds light on the defendant's intent." *Id.* at 136. In *State v. Swinburne*, 116 Ariz. at 410, the defendant was charged with murdering a man while attempting to recover stolen marijuana. The court ruled that the defendant's kidnapping and beating of a different man ten days earlier while attempting to recover the same stolen marijuana was "probative of the defendant's actual intent upon entering

1 the house . . . to recover the marijuana and to use whatever force was necessary to do so.” *Id.*  
2 Neither of these cases provides any support for the State’s attempt to prove a mental state of  
3 recklessness without showing Mr. Ray’s role in and knowledge of the alleged prior illness or  
4 injury, and without connecting that knowledge to notice that Mr. Ray’s conduct created a  
5 substantial risk of death.

6                   **2. The alleged prior acts are not admissible to prove Mr. Ray’s “Motive**  
7                   **and Plan” in 2009.**

8           The State’s alternate theory—that the alleged prior acts are relevant to Mr. Ray’s “motive  
9 and plan,” *see* State’s Response at 8—is unfounded and puzzling. Mr. Ray is not charged with a  
10 specific intent crime, and there is no allegation that his actions or omissions were rooted in a  
11 “motive.” Nor is there *any* logical connection between the alleged prior injuries and the profit  
12 motive the State describes. Indeed, the State’s theory is internally inconsistent. The State asserts  
13 both that Mr. Ray touted the high-risk nature of his programs and downplayed the risks of his  
14 programs. In any event, whether or how Mr. Ray *described* his programs simply has no bearing  
15 on whether participants did, in fact, suffer heat-related injuries. This logical gap is  
16 insurmountable, and is fatal to the State’s 404(b) theory of motive.

17                   **3. Evidence of Mr. Ray’s conduct *after* prior sweat lodges is prohibited**  
18                   **propensity evidence.**

19           At various points, the State has also suggested that it may be attempting to introduce prior  
20 acts other than participants’ alleged hyperthermia. For example, the State has alleged that Mr.  
21 Ray left sweat lodge ceremonies shortly after their conclusion and/or did not structure his  
22 company so that he was personally involved with participants between the close of the ceremony  
23 and the next event. RT, Nov. 10 at 16:16-17:22 (“What Mr. Ray did at the conclusion of the 2005  
24 sweat lodge was he left. He went outside and was not taking care of his participants. That is not  
25 only similar but that’s identical to what happens in 2009 when the sweat lodge ceremony  
26 concludes. Mr. Ray leaves ....”). This is classic propensity evidence and is barred by Rule  
27 404(a). As the Court noted at the November hearing, the State is not permitted to introduce  
28 evidence on the theory that the defendant acted callously once and would be callous again. *See*

1 RT, Nov. 10, at 23:3–10 (“And the other aspect that hasn’t really been dealt with is a 403 aspect.  
2 It almost appears you’re talkinga bout some trait of callousness or something might -- that would  
3 clearly not be admissible. And argument to that effect would not be admissible. Evidence to that  
4 effect would not be admissible. “). The Defense respectfully submits requests that the Court  
5 swiftly clarify the prohibition on propensity evidence and preclude all evidence related to Mr.  
6 Ray’s conduct *after* each prior sweat lodge ceremony.

7 C. **The alleged prior-act evidence is unduly prejudicial and is barred by Rule**  
8 **403.**

9 The use of “extrinsic acts evidence is not looked upon with favor.” *United States v.*  
10 *Bradley*, 5 F.3d 1317, 1320 (9th Cir. 1993). The Arizona Supreme Court has “noted the  
11 potentially prejudicial effects of prior bad acts evidence and cautioned trial courts and counsel to  
12 exercise extreme care in its use, even where it is admissible.” *Terrazas*, 189 Ariz. at 584. This is  
13 because prior act evidence “is quite capable of having an impact beyond its relevance to the  
14 crime charged and may influence the jury’s decision on issues other than those on which it was  
15 received, despite cautionary instructions from the judge.” *Id.* Indeed, Arizona courts have  
16 “repeatedly cautioned that” the “situations in which evidence sought to be introduced is more  
17 prejudicial than probative. . . are very likely to arise in the prior bad act context.” *Anthony*, 218  
18 Ariz. at 445 (quoting *State v. Ives*, 187 Ariz. 102, 111 (1996)). “When the evidence concerns  
19 prior bad acts,” the rules of evidence “have a different thrust, and the suppositional balance no  
20 longer tilts towards admission.” *State v. Salazar*, 181 Ariz. 87, 91 (App. 1994). Instead, “[t]he  
21 discretion of the trial judge under Rule 403 to exclude otherwise relevant evidence because of the  
22 risk of prejudice should find its most frequent application in th[e 404(b) ] area.” *State v. Taylor*,  
23 169 Ariz. 121, 124 (1991) (quoting 1 Morris Udall et al., *Arizona Practice: Law of Evidence* § 84  
24 (3d ed. 1991 )).

25 This admonition applies with special force in this case. This risk of prejudice is  
26 heightened where, as here, the prior acts the State advances are both extensive and vaguely  
27 defined. If the State is permitted to introduce multitudinous, ambiguous references to  
28 “convulsions” and “shock” from prior years, the jurors are very likely to conclude that Mr. Ray

1 behaved dangerously in previous sweat lodges and would be likely to do so again. And any  
2 references by the State to apparently callous conduct by Mr. Ray *after* the alleged injuries  
3 occurred has no probative value whatsoever, and would be irrefutably prejudicial.

4 Moreover, prior-act evidence “is excluded in part to avoid confusing the jury and to  
5 prevent their attention from being distracted from the real issues in the case.” *Swinburne*, 116  
6 Ariz. At 409. Here, it is hard to imagine that the evidence regarding sweat lodge ceremonies  
7 from numerous prior years would *not* distract and confuse jurors. Indeed, after five pleadings by  
8 the parties and three days of evidence and oral argument, the Court and Defense are *still* not clear  
9 on what prior acts are alleged, what Mr. Ray’s alleged involvement in them was, and how they  
10 relate to a relevant purpose. Surely the jury could not be expected glean the minimal relevance of  
11 each prior sweat lodge ceremony, let alone do so without losing focus on the charged conduct.  
12 The likelihood of confusion is further enhanced by the tremendous time and complexity that a  
13 trial spanning many years of ceremonies will require. If the State introduces evidence of prior  
14 sweat lodge ceremonies, the Defense will be forced to mount an elaborate defense as to each prior  
15 year, calling numerous witnesses and separately addressing each alleged medical condition with  
16 expert testimony. This expansion of the trial will confuse the issues, distract the jury, and cloud  
17 the search for truth as to the 2009 events.

### 18 **III. CONCLUSION**

19 The State has failed to prove by clear and convincing evidence the prior acts it alleges, has  
20 failed to articulate a permissible 404(b) purpose for such evidence, and cannot escape the obvious  
21 and overwhelming prejudice that would result from turning the trial on the 2009 events into a trial  
22 that spans 5 years of Mr. Ray’s conduct. The evidence must be excluded.



1 DATED: December 3, 2010

MUNGER, TOLLES & OLSON LLP

BRAD D. BRIAN

LUIS LI

TRUC T. DO

MIRIAM L. SEIFTER

THOMAS K. KELLY

6 By: 

7 Attorneys for Defendant James Arthur Ray

9 COPIES of the foregoing emailed this 3rd day  
10 of December, 2010 to:

11 Hon. Warren R. Darrow

12 Dtroxell@courts.az.gov

13 COPIES of the foregoing emailed and delivered  
14 this 3rd<sup>th</sup> day of December, 2010 to:

15 Sheila Polk

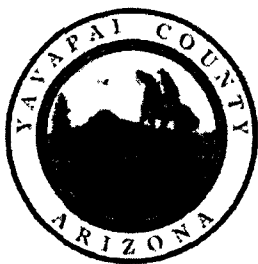
16 Yavapai County Attorney

17 255 E. Gurley Street, 3<sup>rd</sup> Floor

18 Prescott, AZ 86301

19 ycao@co.yavapai.az.us

20 By: 



## Yavapai County Attorney

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SHEILA POLK  
Yavapai County Attorney

### VIA EMAIL & US MAIL

June 24, 2010

Truc T. Do  
Munger, Tolles & Olson L.L.P.  
355 South Grand Avenue, 35<sup>th</sup> Floor  
Los Angeles, CA 90071-1560

Re: State v. James Arthur Ray, CR 201080049

Dear Ms. Do:

This letter addresses various pending issues by topic.

#### Work Product Information / Medical Examiners

You continue to seek information from the State about a meeting between prosecutors, investigators and medical examiners, and have indicated you will file a Motion to Compel. I would be happy to consider your legal authority for your position that you are entitled to further information about this meeting that we believe to be work product protected pursuant to Rule 15.4(b), Arizona Rules of Criminal Procedure, and respectfully request that you provide the State with such authority.

#### Motion Deadline and the Defendant's Disclosure Obligation

As you know, the deadline for motions is July 9, 2010. Because you have not provided the State with any disclosure of materials or evidence and have not filed any Supplemental Rule 15 Disclosures, the State lacks information to file appropriate motions. Please notify the State of any evidence, material, experts or specific witnesses you intend to use at trial. In the event the State does not receive information from you, we will consider filing a request to extend the motion deadline for the State's motions.

In light of the above, I cannot agree to your proposed accelerated motion briefing schedule.

Rule 19.1(b), Rules of Criminal Procedure

You have asked whether the State "would object to mandatory bifurcation of the aggravating factors pursuant to Rule 19.1(b)." To the extent that I understand your question, the State is in agreement that aggravating factors as they relate to the sentence are tried to the jury after a guilty verdict (other than priors – not alleged here).

Audio Recording made by Michael Barber

The State has learned that Michael Barber recorded the meeting of the participants in the 2009 sweat lodge ceremony that immediately preceded the event. Mr. Barber states he gave a blue 350GB external hard drive to Josh Fredrickson which contained the recording of the October 8<sup>th</sup> meeting. According to Detective Diskin, this blue 350GB external hard drive was not present during the search of James Ray International in Carlsbad on October 15, 2009. Detective Diskin's report setting forth this information is simultaneously disclosed with this letter.

The State hereby formally requests that you provide a copy of the audio recording to the State. If it is your position that you will not provide this recording to the State, please state your reasons so that we may consider a timely motion pursuant to Rule 15.2(g), Arizona Rules of Criminal Procedure.

Recordings by Detective Diskin of Defense Interviews

It has come to my attention that Detective Diskin has been providing to you, at your request, copies of the recordings of the defense interviews. I have instructed Detective Diskin to cease doing so. Please be prepared to record all future interviews for yourself if you desire recordings.

"Meet and Confer"

The State agrees to a telephonic "meet and confer" after the exchange of witnesses and exhibits on July 23 to discuss possible stipulations and evidentiary issues if you will agree to the audio recording of the meeting so there is no misunderstanding of the scope of any agreements. Please let me know and I will ask my assistant to arrange the meeting.

Other Act Evidence

The State intends to introduce at trial testimony from past participants in the sweat lodge who became ill or suffered signs of hyperthermia. The identify of these participants and their testimony is set forth in the previously disclosed reports.

Truc Do  
June 24, 2010  
Page Three

Evidence or reference to injuries or incidents that occurred in non-sweat lodge JRI events.

The State intends to introduce this evidence and testimony at trial.

Evidence referring to the Defendant's financial wealth

The State intends to introduce evidence and reference to the financial wealth of the defendant and/or JRI, including references to the cost of the Spiritual Warrior Retreat, the business practices and the sales techniques.

Improper Lay Opinions

The State does not intend to elicit improper lay opinions. Testimony referring to the defendant as a "guru," "Jim Jones," a cult, drinking Kool-Aid, that the defendant "played God," and apt descriptions of the aftermath of the sweat lodge ceremony do not constitute improper testimony or evidence.

Defendant's Prescription Medicine

The State does not intend to introduce evidence or reference to medication of the defendant unless made relevant by the defense; i.e. that defendant's mental state was altered by medications.

Defendant's Statements

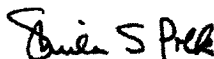
The State does not intend to use any jailhouse recordings unless they become relevant. The State intends to introduce all other statements of the defendant.

Aggravating Factors: Presence of Accomplice

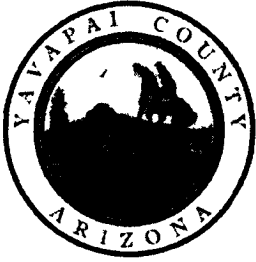
Members of the defendant's staff, whether paid or volunteers, are accomplices to the events. Their names and identities are set forth in the previously provided reports.

Thank you for your efforts to streamline this process. I look forward to receiving from you further disclosure so that the State may identify potential issues to discuss with you, and perhaps streamline. Should you need anything further from the State, please do not hesitate to contact me.

Very truly yours,



Sheila Sullivan Polk  
Yavapai County Attorney



## Yavapai County Attorney

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**SHEILA POLK**  
Yavapai County Attorney

November 22, 2010

Truc T. Do  
Munger, Tolles & Olson L.L.P.  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071-1560

*Re: State v. Ray, State's Witness List*

Dear Ms. Do:

Attached please find a list of the lay witnesses the State intends to call at trial to establish the 2009 events and the prior acts, if admitted by the court. I am providing this list to you so that we can proceed with calendaring the defense interviews of the State's witnesses. Please provide to Penny Cramer, my assistant, the names of the witnesses you wish to interview, the dates you are available to conduct the interviews, a proposed schedule of time slots for her to fill in (indicating the proposed length of each interview), and the order in which you wish to interview the witnesses. Please also indicate whether you wish to interview the witnesses in person or by telephone. For those witnesses you wish to interview in person, we will make arrangements with the local district attorneys' offices where the witness resides to hold the interviews there.

Please advise me whether you are willing to stipulate to the chain of custody of the bodies of the three victims.

The State will also call at trial representatives of the victims' families, the medical examiners, several experts, the DPS criminalist, certain paramedics, and law enforcement personnel. We will also consider calling as State's witnesses former JRI employees. A final determination as to the specific witnesses will be made soon. The State reserves the right to timely amend our witness list as allowed by the rules of criminal procedure.

As you have requested witness interviews and time is of the essence, please provide the requested information to Penny as soon as possible. Meanwhile, do not hesitate to let me know if you have any questions.

Very truly yours,

Sheila Sullivan Polk  
Yavapai County Attorney

Attachments

**TRIAL WITNESSES:**

Andresano	Linda
Armstrong	Jeannette
Barber	Michael
Barratt	Scott
Brinkley	Kim
Bunn	Beverly
Caci	Lou
de la Paz	Sylvia
Ebert	John
Foster	Fawn
Gennari	Laurie
Gordon	Dawn
Granquist	Danielle
Grimes	Ami
Haley	Jennifer
Hamilton	Amayra
Mehavrer	Dennis
Mekosh	Brent
Mercer	Debbi
Mercer	Ted
Mercer	Sarah
Olesen	Danita
Olesen	Mike
Phillips	Melissa
Potter	Randy
Prieve	Lara
Rainey	Brandy
Ray	Stephen
Rock	Mark
Ronan	Sean
Rondan	Lisa
Senjem	Rosemary
Spencer	Sidney
Tucker	Laura
Wachterhauser	Lynette
Wagoner	Nell

**404b WITNESSES:**

Brooks-Moore	Robbie
Bunker	Julia
DeMartino	John
Dodaro	Melanie
DuHaime	David
Duncan	Bruce
Gingerella	Tere
Hank	Shawn
Huffnung	Amanda
Issacs	Susan
Kaprowski	Danielle
Manner	Cynthia
Moss	Marilyn
O'Brien	Patrick
Ogilvie	Nancy
Pfankuch	Michelle
Reynolds	Mickey
Riemma	Angela
Rock	Vicki
Smyser	Susan
Stern	Sheryl
Waters	Barbara
Omley, M.D.	Timothy

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SUPERIOR COURT OF STATE OF ARIZONA  
COUNTY OF YAVAPAI

STATE OF ARIZONA,  
  
                    Plaintiff,  
  
      vs.  
  
JAMES ARTHUR RAY,  
  
                    Defendant.

CASE NO. V1300CR201080049  
  
**TRANSCRIPT OF INTERVIEW**  
  
Witness: Daniel Pfankuch  
  
By: Det. Ross Diskin  
  
Date: 10/31/09  
  
Location: Telephonic  
  
Length: 24:03 minutes



1 PFANKUCH: This is Daniel.  
2 DISKIN: Hi Daniel. This is Detective Diskin with the Yavapai County Sheriff's  
3 Office. How are you doing?  
4 PFANKUCH: With what?  
5 DISKIN: I am Detective Diskin with the Yavapai County Sheriff's Office. I am  
6 investigating the sweat lodge deaths that happened in Sedona.  
7 PFANKUCH: Okay.  
8 DISKIN: And I talked to couple of your friends who were there with you. I talked  
9 with Mickey Reynolds and David Duhaime and they suggested that I give  
10 you a call and ask you about your experiences in 2005.  
11 PFANKUCH: Okay.  
12 DISKIN: Do you have time to talk about it right now?  
13 PFANKUCH: I do.  
14 DISKIN: Okay great. Yeah, I also talked to the Hamiltons and they gave me a little  
15 bit information but I just kind of wanted to hear from your perspective  
16 what happened.  
17 PFANKUCH: Well, I guess my take on it after studying more about the whole thing is  
18 that the sweat lodge was not conducted in a traditional Native American  
19 nature because a person cannot oversee that many people. My experience  
20 was it went, it went very long and some of the people, I think like Mickey  
21 and stuff, left and came back in but I stayed the whole, almost four hours,  
22 and ended up, I guess it's kind of difficult to explain because some people  
23 don't, just don't understand, I feel like just like I left, left this world and  
24 went somewhere else. And I was later revived and then after I was brought  
25 back here to this place, I was taken to a hospital in an ambulance where  
26 they did a lot of tests. I think they thought I was on something but I  
27 wasn't. So they rehydrated me for, through the night and then I was  
28 released the next morning. But they did all kinds of extensive blood tests

1 and all kinds of things because they were convinced that I was, had taking  
2 something, or I don't know ... but.

3 DISKIN: Okay, what do you remember about the, that entire week as far as what  
4 you did before that?

5 PFANKUCH: Well, we did a lot of other exercises, I guess you'd call them, as far as like  
6 doing a medicine wheel and doing I think they call it the Samurai game or  
7 something like that, and ...

8 DISKIN: Okay.

9 PFANKUCH: A lot of them were extensive, meditation, group meditation.

10 DISKIN: Okay. Did you guys go on the vision quest in 2005?

11 PFANKUCH: Yes. That's what it was when I mentioned the medicine wheel, yeah.

12 DISKIN: Okay. Do you remember was that before or after the sweat lodge?

13 PFANKUCH: That was before.

14 DISKIN: Okay. And how long was that?

15 PFANKUCH: To the best of my recollection, it was we went out there, it was at least 24  
16 hours.

17 DISKIN: Okay, and during that 24 hours, did you eat or drink anything?

18 PFANKUCH: No.

19 DISKIN: Okay. Okay. How did you first learn about James Ray?

20 PFANKUCH: I think my wife at the time I think found something on the internet and  
21 then we started kind of looking from there.

22 DISKIN: Okay.

23 PFANKUCH: Then he had a local event here, a free event here in Boise. And then after  
24 that, I paid \$40,000 in one year for both of us to go through all of his  
25 courses.

26 DISKIN: Okay. So did you go, I am assuming, to all of his courses in 2005?

27 PFANKUCH: No, some of them were in 2006.

28 DISKIN: Okay. Had you, before this, had you ever been in either a sauna or sweat

1 lodge?

2 PFANKUCH: I have been in saunas before. That was my first sweat, sweat lodge

3 experience.

4 DISKIN: Okay, and how was the, the sauna different than the sweat lodge?

5 PFANKUCH: (laughing) Well, the sauna, the saunas that I have been in were, there

6 wasn't somebody, it wasn't a spiritual ceremony or wasn't anything like

7 that where people were in there chanting and doing other things like that,

8 you just go in for 20-30 minutes and you get out.

9 DISKIN: Okay. And at Spiritual Warrior in 2005, did you hear anyone make any

10 kind of assurances that the people that were conducting the sweat lodge

11 knew what they were doing?

12 PFANKUCH: Not to my recollection.

13 DISKIN: Okay.

14 PFANKUCH: Other than, other than they had done them in previous years, they had

15 done it before.

16 DISKIN: Okay. But James Ray didn't say you know this is how I was trained and

17 how to do a sweat lodge or anything like that?

18 PFANKUCH: No.

19 DISKIN: Okay. Did you feel prior to going into the sweat lodge that it was going to

20 be safe?

21 PFANKUCH: Yes. I felt that it would be, I think they mentioned you know that there

22 might be some discomfort to work through that and things like that, but

23 they didn't ever mention anything about you know you could really die in

24 there.

25 DISKIN: Okay. And do you remember in 2005 what your position was inside the

26 sweat lodge, in other words were you near the door, were you away from

27 the door?

28 PFANKUCH: I was in the way back against the wall.

1 DISKIN: Okay. And do you remember ... you said, you mentioned that it had gone  
2 for four hours, did you stay inside of it until the end?  
3 PFANKUCH: I stayed until the very end, yes.  
4 DISKIN: Okay.  
5 PFANKUCH: (inaudible) I did.  
6 DISKIN: Towards the end there, do you remember anything?  
7 PFANKUCH: No I had passed out and was hallucinating and dreaming and whatever.  
8 DISKIN: Okay.  
9 PFANKUCH: (inaudible) and then I went into where I was actually hitting and kicking  
10 people and stuff like that.  
11 DISKIN: Okay.  
12 PFANKUCH: Because I thought I was somebody else and somewhere else and ...  
13 DISKIN: Okay. And after this happened, after you returned after going to the  
14 hospital, did you talk to James Ray about the incident?  
15 PFANKUCH: Very, very briefly. I did go to his room and spoke to him for just a few  
16 minutes just to kind of tell him what my experience was and share with  
17 him. I mean I didn't go there to ... you know angry or anything, I just  
18 went to kind of what I really wanted was some, some help and some  
19 explanation on what ... you know he's been doing this for years, and I just  
20 kind of wanted and I never gotten that. I've never gotten any ... I mean  
21 they didn't never offer to help pay for my hospital bills. I had to pay for  
22 all that. And there is never any offer to, now studying more on what a  
23 shaman's responsibility is in these kind of situations, their responsibility is  
24 to retrieve every soul and be with every person that's within their care and  
25 I don't feel that was ever done.  
26 DISKIN: When you were transported to the hospital, do you remember of any of  
27 James Ray's staff going to the hospital?  
28 PFANKUCH: No.

1 DISKIN: So nobody was there to check on you.  
2 PFANKUCH: No, I don't think that there was.  
3 DISKIN: Okay.  
4 PFANKUCH: I do recall that they were another couple that came in from Boise that  
5 drove their own vehicle I think and came in and visited but ...  
6 DISKIN: Okay. Then, that's how you got back to the retreat?  
7 PFANKUCH: Yes.  
8 DISKIN: Okay.  
9 PFANKUCH: Yeah. Because my wife and then those two people I think came to ...  
10 DISKIN: Okay.  
11 PFANKUCH: ... the hospital and stayed with me in the hospital for bit, several hours..  
12 DISKIN: Okay. And when you came back, some people that we talked to said that  
13 and also the Hamiltons said that that you had mentioned that you felt that  
14 you had an out-of-body experience and didn't, didn't, you either didn't  
15 want to come back or didn't think that you fully came back. Do you  
16 remember anything about that?  
17 PFANKUCH: Yes I did say that and I still feel that way.  
18 DISKIN: Okay. Can ...  
19 PFANKUCH: It's been four years.  
20 DISKIN: Can you explain that a little bit?  
21 PFANKUCH: I just sometimes feel like I ... that I just, I don't belong here.  
22 DISKIN: Okay.  
23 PFANKUCH: That and that, I don't know. It's hard, it's really hard to explain but ...  
24 DISKIN: Yeah I think I understand.  
25 PFANKUCH: ... it was such, such a peaceful place and so you know where I went I  
26 mean it was so wonderful ... it's hard to come back to this world where  
27 you know people are killing each other, people are hurting each other,  
28 people are not loving each other, and that's not the place I was.

1 DISKIN: Do you remember like what you saw or what experiences you had when,  
2 when you were at that other place?

3 PFANKUCH: I do and I have actually been trying to find my notes because I wrote it all  
4 down, I've moved a couple of times and I cannot find my notes but the  
5 best as I remember is that it was a place where we are, I guess the best  
6 way I can describe it in the way that's it's already been described by  
7 others is kind of a place as a collective consciousness where we're all  
8 connected.

9 DISKIN: Okay. Have you .. did you ever go to any kind of follow-up visits with  
10 your doctor after you got home?

11 PFANKUCH: No.

12 DISKIN: Okay. Do you know if there was any kind of permanent damage that was,  
13 I mean physiological damage that was caused by this?

14 PFANKUCH: I have no idea, I mean I am very active person I mean athletically and  
15 whatnot so I don't know that ...

16 DISKIN: Okay.

17 PFANKUCH: ... there was any permanent ...

18 DISKIN: Okay.

19 PFANKUCH: ... damage or not.

20 DISKIN: Have you, have you researched at all the effects of hyperthermia to see if  
21 maybe that could have been the cause of your symptoms?

22 PFANKUCH: No I haven't really.

23 DISKIN: Do you remember what the hospital said was wrong with you?

24 PFANKUCH: Heat stroke I believe.

25 DISKIN: Okay.

26 PFANKUCH: Heat stroke and severe dehydration.

27 DISKIN: Okay.

28 PFANKUCH: So they hooked me up to IV and filled me full of fluids for many hours.

1 DISKIN: Okay. And if it appears or, or we conclude that there may have been  
2 something criminal what happened in 2005, some criminal negligence  
3 involved, would you be willing to be a victim?  
4 PFANKUCH: Yeah, I would say there is a good possibility I would, yes.  
5 DISKIN: Okay. You know the reason is I have talked to other people and I have  
6 heard some other things that went on while you were unconscious that  
7 kind of causes some concern and some things that were similar to what  
8 happened this year. I don't know if ... I don't know how many people  
9 you've talked to, I would assume everybody who was around, but it  
10 seemed like there was some reluctance to get you any kind of help?  
11 PFANKUCH: I do recall hearing some other people that when I came out or you know  
12 when I came out of the sweat lodge they were looking for James and  
13 couldn't find him ... because I did, I did come out of the sweat lodge  
14 when I was finally coaxed out and I actually walked out on my hands  
15 across the sweat lodge and came out. And then people were, now I  
16 realize, trying to help me. But I was picking up three or four guys way  
17 bigger than me picking up right off the ground and trying to hold me up or  
18 hold me down to get me water. But they went to find James and couldn't  
19 find him. He went back to his room. And then from what I have heard  
20 since then, he kind of got into a heated debate with the owner saying leave  
21 my people alone and she's the one that called 9-1-1, and not him.  
22 DISKIN: Yeah, and that that kind of causes some concern especially looking at it  
23 after the fact, after this happened in 2009. And so we're, we're kind of  
24 looking at everything. You know this investigation went from just what  
25 happened this year to you know the history of all James Ray events. At  
26 any of the events that you went to, did you ever see any medical personnel  
27 that were on standby in case something went wrong?  
28 PFANKUCH: No.

1 DISKIN: Okay. All right, did you go to any of the events where you had to break  
2 bricks or break boards?  
3 PFANKUCH: What's that, what?  
4 DISKIN: Did you go to any of the events where you had to break either a brick or a  
5 board?  
6 PFANKUCH: Yeah, boards.  
7 DISKIN: Okay. And did anybody get injured during that?  
8 PFANKUCH: Not that I recall other than just ...  
9 DISKIN: Okay.  
10 PFANKUCH: No, just slight pain from hitting the boards I guess I don't know. I don't  
11 know to me, I mean I am a trained martial artist so it wasn't ...  
12 DISKIN: Oh, okay.  
13 PFANKUCH: ... anything for me but yeah for others, I didn't see anybody like in  
14 excruciating pain or anything like that.  
15 DISKIN: Okay. And have you been to the doctor at all since this happened?  
16 PFANKUCH: I am sure, yeah. I lead a very active lifestyle and I have been injured  
17 playing soccer and other things like that.  
18 DISKIN: The reason I bring this up is because there may have been some permanent  
19 damage that was caused by the sweat lodge in 2005 and I am wondering  
20 if, if you thought about going to look into that and see if, if there could  
21 have been anything you know that could you know be permanent or if  
22 there was any kind of you know minor brain damage or anything like that  
23 ... I don't know if they can tell that on a CAT scan or what. But from  
24 what it sounds like, from your friends, is that there is something different  
25 about you now that it's just not quite the same and nobody can really  
26 understand why.  
27 PFANKUCH: Yeah, I mean I've gone to, from a six-figure income down to being  
28 unemployed and unmarried and homeless, and there's been some big



1 changes in my life.

2 DISKIN: Do you think that maybe there was any kind of permanent brain damage

3 that was caused or, or anything like that?

4 PFANKUCH: I don't know so much, I don't know so much as it's brain damage, maybe

5 some subconscious or unconscious things that I can't explain or can't get a

6 grasp on maybe. I don't know.

7 DISKIN: Okay.

8 PFANKUCH: And that's where I felt that I should have got some help from the

9 facilitator. In any (Inaudible) shamanistic tradition I mean that's their

10 responsibility.

11 DISKIN: Right. Have you at any time filed any kind of lawsuit against James Ray

12 International?

13 PFANKUCH: No.

14 DISKIN: Okay. Is that something that you, you thought about?

15 PFANKUCH: Not really until recently I guess.

16 DISKIN: Okay.

17 PFANKUCH: I guess, I guess it's you know popped into my head from time to time

18 cause I thought you know they really should have helped to pay for at least

19 for my medical expenses or something like that, but never never offered.

20 DISKIN: Okay. Well, what I am going to do is take your information down and we

21 are going to see if James Ray should have known better prior to 2005 that

22 the sweat lodge could you know cause serious injury and serious

23 dehydration and hyperthermia, and if if basically, the only way he would

24 be charged with the crime with you as a victim as if he clearly knew

25 better, if he clearly knew that this was dangerous and did it anyway.

26 PFANKUCH: Yeah. He certainly knew afterwards I mean he told me his ego got in the

27 way and he just needed to sit down and learn from this.

28 DISKIN: Later?

1 PFANKUCH: Hearing the recent reports I guess he didn't learn maybe what he needed to  
2 learn.  
3 DISKIN: So afterwards James Ray told you that his ego got in the way?  
4 PFANKUCH: Yes.  
5 DISKIN: Why do you think he meant by that?  
6 PFANKUCH: That he pushed people for his own gain somewhat ...  
7 DISKIN: Okay.  
8 PFANKUCH: ... push people past because he thought he could do it, handle it.  
9 DISKIN: Okay. And he said that he was going to learn from this?  
10 PFANKUCH: Yes,  
11 DISKIN: Okay. What I would recommend is you know just talk to your doctor and  
12 just you know explain to him where you went to in 2005 and what your  
13 symptoms were and just see if that could have caused any kind of  
14 permanent damage to anything. This year we are seeing, it's strange, it  
15 seems like people either fully recover or they die. And it's unclear yet if  
16 the people that were transported to the hospital in bad shape who  
17 recovered from it if they are going to fully recover you know or if they are  
18 going to have issues whether it's kidney damage or anything like that. So I  
19 would definitely recommend that you talk to your doctor about it and just  
20 see if there could be any kind of permanent damage that was caused by  
21 that. Also I --  
22 PFANKUCH: Yeah don't. At this point, I don't have any insurance, I don't have any  
23 doctor and I don't have means to really do that, but ...  
24 DISKIN: Okay, all right. Well, what I'll do, can I give you my phone number and  
25 my contact information so if you have any questions or you think of  
26 anything else that is important, maybe you could give me a call?  
27 PFANKUCH: Sure.  
28 DISKIN: M first name is Ross, R-O-S-S and my last name is Diskin, D-I-S-K-I-N,

1 and my direct line is area code 928, 777-7348.

2 PFANKUCH: 777-7348?

3 DISKIN: Right.

4 PFANKUCH: Okay.

5 DISKIN: And um, what do you ... what do you think, I mean I am trying to

6 understand how, how this transpired as far as you losing everything. What

7 happened?

8 PFANKUCH: Um, I don't know. I mean it's taken a course of four years to do it. I

9 mean it was a long time but ...

10 DISKIN: Yeah, but do you think it ...is it like?

11 PFANKUCH: I wasn't happy with the job. I wasn't you know I wanted to be with my

12 wife in Montana and we ended moving up there, so I just kind of

13 liquidated everything I had and moved up there and that didn't work out.

14 Moved back to Boise.

15 DISKIN: Okay. Well, if you can think of anything else, give me a call, or if you

16 have any questions, give me a call.

17 PFANKUCH: Okay. And you are detective at, what is it called?

18 DISKIN: It's the Yavapai County Sheriff's Office.

19 PFANKUCH: How do you spell that?

20 DISKIN: It's a Y-A-V-A-P-A-I

21 PFANKUCH: Okay..

22 DISKIN: And Sedona where the Spiritual Warrior Retreat was is in inside Yavapai

23 County.

24 PFANKUCH: Okay.

25 DISKIN: All right.

26 PFANKUCH: All right, well I hope I have given you ...

27 DISKIN: You have and I appreciate you talking.

28 PFANKUCH: ... information that's useful.

1 DISKIN: And have a good day.  
2 PFANKUCH: All right, thank you.  
3 DISKIN: All right, we'll see you, bye.  
4 PFANKUCH Bye.

5  
6 END OF INTERVIEW.

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SUPERIOR COURT OF STATE OF ARIZONA  
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

**TRANSCRIPT OF INTERVIEW**

Witness: Michele Pfankuch

By: Det. Ross Diskin

Date: 12/05/09

Location: Telephonic

Length: 39:57 minutes

1 PFANKUCH: It's alright.

2 DISKIN: Yeah, I had actually I had left you several messages and it turns out I had

3 the wrong phone number the whole time. So...

4 PFANKUCH: Oh.

5 DISKIN: I finally have got the correct phone number.

6 PFANKUCH: Oh.

7 DISKIN: But anyway you know what, we are doing the criminal investigation on

8 James Ray.

9 PFANKUCH: Right.

10 DISKIN: Obviously during the course of that Daniel's name came up.

11 PFANKUCH: Certainly.

12 DISKIN: And kind of, kind of what we're looking at is if James Ray should have

13 known better, should have known that people could be seriously injured in

14 the sweat lodge and didn't take the proper precautions. So that's why the

15 interview with Daniel was so important.

16 PFANKUCH: Right.

17 DISKIN: And I kind of need to get ... it was kind of difficult to, for me to really

18 comprehend how he was explaining the situation. He kind of feels like he

19 had an out of body experience and never really returned. And you know I

20 just kind of wanted to get your take on that and find out kind of what you

21 think happened.

22 PFANKUCH: Well, I definitely think that that was the case with Daniel because he has

23 just never really been the same since then, the incident. And I guess it's to

24 whatever it's worth, whatever you believe or don't believe but I know

25 what I saw and he was definitely not himself, when he came out of that

26 sweat lodge and I actually, because I was sitting, I actually wasn't sitting

27 next to him, I was across from him and I don't know, I don't really know

28 what you want to know.

1 DISKIN: Yeah, kind of what, first of all what did he do, I mean what effect did he  
2 have from the sweat lodge?

3 PFANKUCH: Well, when everyone was starting to exit, I had actually gone out for one  
4 of the sessions in there, just because I just, I didn't want to lose my  
5 composure I guess is the best way to explain it. So I went out and kinda  
6 regained you know my awareness and everything and then I actually did  
7 go back in. And I finished out the whole session. So then as we were  
8 leaving out there was a certain way you had to leave so they were  
9 dismissing the ... cause there was two rows of us and I was in, see if I can  
10 remember this, I actually think I was in the back row, and as well as  
11 Daniel except he was on the other side of the sweat lodge so I could tell  
12 right away that there was something not quite right with Daniel. And he  
13 just, he refused to go out and I was like, I could tell something just was not  
14 right, and so I was actually, him and I, I was actually the very last one out  
15 of the sweat lodge. I said no I am staying behind, I said I gotta stay with  
16 Daniel. Something's not right, he doesn't want to leave. And so I had  
17 actually proceeded to try to encourage him to go out and but he just, he  
18 didn't even realize who I was, so I knew then that okay he is not here like  
19 he's, I don't know where he's at but this is not Daniel, the Daniel I know,  
20 and so anyway I proceeded to finally help him get out, but he just kept  
21 saying, I am a Samurai Warrior, I am a Samurai Warrior and then once we  
22 got out of the lodge, he proceeded to do; I mean he had, it was unreal, he  
23 kind of had what superhuman strength. Like I was almost kind of fearful  
24 to even be near him, because he was just so strong and so he proceeded to  
25 do this hand stand and he actually walked on his hands and then he fell  
26 and he kind of knocked me over and I was just trying the whole time to  
27 encourage him, "Daniel come back, you know you are not yourself you  
28 need to gain some composure here." I was trying to keep him, I guess I

1 was trying to keep him under control because he just didn't realize what  
2 he was doing. At one point he had actually and I can't remember the gal's  
3 name but at one point he was going to actually, he took this gal and was  
4 going to punch her. And I actually sat between them and I think Mickey  
5 did too or somebody, some guy did, it might not have been Mickey, but if  
6 it wasn't for him and I actually like Daniel made ... had a brief awareness  
7 and didn't do anything but he continued to say all this rambling mumbo  
8 jumbo on the whole entire time, I am trying to get him to wherever he  
9 was, I kept telling him just "Daniel you need to come back into your body,  
10 you need to come back." Anyway it was and then I tried to proceed to  
11 cool him down because his body temperature was really hot and during  
12 this whole time I was actually pissed because James left. I don't know  
13 why he left but he had his own room and everything else and I was  
14 actually kind of pissed because here all these ... there were other people  
15 there and I know Mickey and there are some other ones that were actually  
16 getting the hose and water and trying to cool some other people down who  
17 you know and I actually don't even really know what was going on with  
18 them, I was just concentrating on Daniel because you know he was my  
19 husband. So at that time I know the owners, I think that they are the ones  
20 ultimately ended up actually calling the ambulance and I got pissed at  
21 Daniel because I was like listen you know this is going to end up costing  
22 us a lot of money for this thing, I was trying, because he was not in his  
23 body. I don't care what anybody says but he wasn't, it was not him. And  
24 he cause he didn't want to come back, he, he was, anyway after he gained  
25 his composure and stuff he finally did but by that time the ambulance had  
26 come and you know we went to the hospital and everything but yeah that  
27 whole time, I don't ... I don't know, I know James really encouraged us to  
28 stay in the sweat lodge and just you know somewhere I was reading some



1 of this stuff online about it and some of the comments that were made  
2 those were the same comments that he was making at the time that we had  
3 done it, and at the time we had done it was the most intense I guess he has  
4 ever done that sweat lodge, but it's also the most people he has ever had  
5 was that first one we had in '05 from my understanding.

6 DISKIN: How many people were in that sweat lodge?

7 PFANKUCH: I think there were close to, I was trying to think, there had to be between  
8 50 and 60 people but I don't remember, I think it was like 56.

9 DISKIN: Okay. And do you remember anybody saying call 9-1-1 when Daniel was  
10 having problems?

11 PFANKUCH: I actually think yeah, somebody did, I don't know who it was, but you  
12 know the owners of Angel Valley had actually come down because at that  
13 time they had finally realized that listen something is not right, and like I  
14 said this entire time every ... it was interesting to me because I was you  
15 know I was coherent, I was hot you know but they had water there, and  
16 like I said I was just mainly focusing on Daniel, and then the owners of the  
17 Angel Valley came down and I think the woman I can't remember her  
18 name I think she is the one that actually called.

19 DISKIN: Yeah, Amayra. Amayra is the one that called.

20 PFANKUCH: Yeah exactly. So but I don't really remember or recall if anybody said go  
21 call 9-1-1. I think she just kind of made the executive decision to go and  
22 do it, and actually, if I recall right I think some people were saying, "no,  
23 no, no don't call, don't call," this is my, you know, and then she went  
24 ahead and did it, which I am glad she did.

25 DISKIN: Do you remember who was saying no, don't call?

26 PFANKUCH: I don't, no.

27 DISKIN: Okay. Do you know why they would say don't call?

28 PFANKUCH: Well, you know I mean we have a guru that's you know doing a sweat

1 lodge you know and the ramifications of it I mean you know?

2 DISKIN: Okay.

3 PFANKUCH:: To me I mean if there are, especially if they are under a lot, ...Some of

4 those people I mean they are so brainwashed by him I think that they are,

5 they ultimately will do anything and everything to protect him. You know

6 that, and I think that he exudes and has a lot of control and power and he

7 actually, James and I had actually, because I ... we'd been to all of his

8 events and there were a couple of times where you know he even

9 confronted me because I just wouldn't put up with his bullshit and he

10 knew it, and he didn't like it. And he was always saying you know don't

11 "go find teachers outside me, blah, blah, blah" and I said bullshit, you are

12 not the only teacher dude.

13 DISKIN: Yeah.

14 PFANKUCH: Anyway, so I mean he did, we had a couple, two events. His big, we had,

15 two events we had two confrontations.

16 DISKIN: What was the nature of that? I mean what was he trying to get you to do

17 that you wouldn't do?

18 PFANKUCH: It wasn't so much what I wasn't willing to do, it was the fact that I felt

19 misled with a couple of different things and here I am, and Daniel you

20 know we are paying all his money and no ones going to say anything? I

21 thought this is bullshit and so I made it my voice, my opinion and I at one

22 point I had told I mean that, I actually told him in the event with Megan

23 Fredrickson, who is like, you know she is like his right hand person.

24 DISKIN: Right.

25 PFANKUCH: But before that it was Tere. Tere um...

26 DISKIN: Gingerella.

27 PFANKUCH: Yep. And then Tere left like during that whole time that Daniel and I were

28 going, proceeding through the events because I don't know why I never I

1 always kind of felt like she was leaving for a specific reason but nothing  
2 was ever said.

3 DISKIN: Okay.

4 PFANKUCH: But with Megan she had actually gone back and of course told James that  
5 you know I don't, I have no idea what she really shared with him but at  
6 one point this was at Modern Magick in Hawaii and then he had  
7 confronted me during a little exercise and stuff and was basically saying  
8 well do you feel like you are getting your moneys worth and I said, I said  
9 yeah I feel like I am getting my moneys worth but I said I do feel like I  
10 have been mislead with a couple of different things that I was under the  
11 impression where we are going to be (inaudible) blah, blah, blah and then  
12 he offered to give his money back and all this other crap and I said that's  
13 not my point. So anyway and then there was another incidence at  
14 Practical Mysticism too, but I mean whatever, he kind of pissed me off  
15 with the whole thing, you know with Daniel and stuff cause he  
16 disappeared and I just felt like you know what this is your function, you  
17 are the leader of this and you need to be here, and you need to be, take  
18 some responsibility and ownership for this you know.

19 DISKIN: Yeah.

20 PFANKUCH: But he never did and he never once said you know any thing or apologize  
21 or offered to pay the ambulance bill or anything which, you know, is  
22 neither here nor there, it's just that I felt like you know he didn't take  
23 ownership for it.

24 DISKIN: So, he never made an offer to pay for the medical expenses?

25 PFANKUCH: Nope.

26 DISKIN: Okay.

27 PFANKUCH: And then we had actually after Daniel was released from the hospital,  
28 James actually did want to see Daniel and myself and because he had a

1 private room there and stuff and so we had gone to him but it was  
2 basically to, you know, there was no apology there, he just wanted to find  
3 out what had happened, what Daniel had experienced, basically was all it  
4 was. And I honestly think you know a lot of it, I don't know what the past  
5 sweat lodge events had been like up till this point. I am assuming that he's,  
6 they've been the same way but I personally think you know that James  
7 was just getting too big for his britches and you know wanted to push  
8 more and more people to have you know, out of body experiences through  
9 the sweat lodge and not taking into consideration the consequences or the  
10 risks that were involved.

11 DISKIN: So, do you think Daniel's problems, do you think they were, they were  
12 spiritual or do you think it was physical?

13 PFANKUCH: I'm going to say it was both, because it was a spiritual, I definitely feel it  
14 was a spiritual experience just from what I saw and how he was acting but  
15 at the same token it just gave him I mean it gave him like superhuman  
16 strength like he is a strong individual anyway, but I would definitely say it  
17 was both, but you know ever sense then he just, he's been very, I don't  
18 even know what the right word would be, he is just not completely  
19 himself, he is definitely, he almost fragmented is a good way to say it.

20 DISKIN: Yeah, that makes sense, and then the conversation that you guys had with  
21 James Ray did he, can you tell me more about that, what exactly was said?

22 PFANKUCH: He just wanted to know exactly what Daniel had experienced and so he  
23 went into detail, Daniel actually went into detail, saying what he had  
24 experienced, what, where he was at and I don't know how much, you  
25 know, Daniel was just saying you know that he had experienced and saw  
26 geometric shapes and he had also seen, he felt like he was everything and  
27 everybody all at once. So which for me I just I really just stood there and  
28 listened and stuff and he just wanted to know you know and then he was

1 kind of like well you know I have never had anybody go and you know  
2 have an out of body experience through one of these and I thought James  
3 thought it was more cool than anything that he had actually had a student  
4 of his be able to go that far, you know and achieve that. I don't even know  
5 what you call it, Nirvana I guess or ...

6 DISKIN: Yeah.

7 PFANKUCH: Some sort of spiritual awakening I guess would be what it would be  
8 called.

9 DISKIN: Okay.

10 PFANKUCH: But that's assuming that James was kind of like wow this is cool, you  
11 know like and so I almost wondered if that's what he was trying to attempt  
12 all these years you know to have other students be able to have that same  
13 experience. I don't know.

14 DISKIN: Yeah.

15 PFANKUCH: I do know after the last event you know after, excuse me, Modern Magick  
16 you know Daniel and I just both decided that you know we didn't need to  
17 do anymore of his events.

18 DISKIN: Okay, and I talked to ...

19 PFANKUCH: Sorry.

20 DISKIN: It's alright. I talked to Daniel a little bit about what James Ray had said  
21 and did James Ray at all apologize? I know you said that he seemed like it  
22 was cool that Daniel had an out of body experience but did he apologize or  
23 say you know something went wrong and we need to make sure that  
24 doesn't happen again or anything like that?

25 PFANKUCH: Not to my recollection, no.

26 DISKIN: Okay.

27 PFANKUCH: I don't remember him ever saying anything like that. And then I also  
28 thought that you know he would like want to come out and at least talk to

1 everybody and stuff after the event because that we were leaving the next  
2 day but he wasn't anywhere to be found, it was like he I don't know if he  
3 took off early or if he was just hiding in his room until everybody he left  
4 or what but we never did see him the next following day. So everybody  
5 just kind of left and it was kind of like the event wasn't talked about, it  
6 wasn't ... nothing, it was just bizarre to me. It's like that's the other thing  
7 that pissed me off, it was like, you know what you just have these many  
8 people in a sweat lodge, half the people you know ... same thing that  
9 happened at this last one, there were several of them that you know were  
10 dehydrated coming out they. They could, they could have easily died. And  
11 then Daniel you know his whole experience and then having the  
12 ambulance come and stuff but yet you don't want to address or talk to  
13 anybody about this or? Like it was just weird to me.

14 DISKIN: Yeah, and when you guys went to the hospital, you went with Daniel,  
15 correct?

16 PFANKUCH: I did, I wasn't allowed to ride in the ambulance but there was a couple  
17 there that were going through the event and they said no, we'll take ya.

18 DISKIN: Okay.

19 PFANKUCH: So I followed with them.

20 DISKIN: Did James Ray or any of his staff go to the hospital to check on Daniel or  
21 call to see how he was doing or anything like that?

22 PFANKUCH: Nope.

23 DISKIN: Okay. Yeah what, you know I am, you know I am not saying that this isn't  
24 a spiritual event because I believe it is but the effects that Daniel had are  
25 consistent with heat stroke and hyperthermia?

26 PFANKUCH: Right.

27 DISKIN: And even if this wasn't a spiritual event if it had gotten that hot his brain  
28 had gotten that hot, he would have the same behavior as what occurred in

1 the sweat lodge.

2 PFANKUCH: Right.

3 DISKIN: And you know one of the things that we are looking at we are finding  
4 from 2009 that people are still suffering you know permanent damage  
5 from this, and something that we had talked about is it's possible that  
6 Daniel had received some type of brain damage just from his brain get too  
7 hot. And so I

8 PFANKUCH: So what kind of symptoms would those be Detective?

9 DISKIN: I don't know, because I'm detective, and not a doctor but I had you know  
10 we have a meeting scheduled with the medical examiners that did the  
11 autopsies for this year and I talked to the prosecutors and asked them you  
12 know what we should do with Daniel and they recommended that they  
13 believe that if he were to go get a CAT scan the doctor may be able to  
14 determine if there was you know damage to brain cells you know  
15 consistent with heat stroke or hyperthermia. And I talked to Daniel about  
16 that and you know he was willing if it was determined that charges should  
17 be filed in 2005, he was willing to be a victim and he was willing to go get  
18 a CAT scan but he didn't have any insurance or any money so we were in  
19 the process of trying to figure out how to go about doing that. But you  
20 know I think that yeah that probably was a spiritual event but I think that  
21 there was also damage done.

22 PFANKUCH: Well, yeah, you are going to have physical you know effects of it too.

23 DISKIN: Right.

24 PFANKUCH: So, I can understand that and I believe that.

25 DISKIN: And and let me ask you this, I don't know if you kind of talked a little bit  
26 about this but, how many people do you think in 2005 came out of there  
27 and were in some type of medical distress?

28 PFANKUCH: Oh, my gosh, you know if I had to, I actually had talked to Daniel and I've

1 talked to Mickey too because we were so close when this event happened  
2 and I would have to say there were probably 15-20 people.

3 DISKIN: Okay.

4 PFANKUCH: I mean I know some of them they went back to their tents and stuff and  
5 then some of them you know I mean I can remember specifically Shawn  
6 Hank and Mickey they were helping out people like cooling off their  
7 heads and stuff with hoses and water and buckets of water and I can

8 DISKIN: Okay.

9 PFANKUCH: I mean kind of chaotic, honestly when I came out of there. I mean like I  
10 said my main focus at that point was you know Daniel and trying to keep  
11 him, I mean I couldn't and there were other guys that, there were a couple  
12 of other guys that had to, you know restrain them too, you know from  
13 hitting that one gal almost, I mean thank God nothing happened there but.

14 DISKIN: Yeah, I talked to them and they described that and you know some similar  
15 things happened in 2009, nobody was pushing anybody but people were  
16 crawling under the hot rocks and didn't even know it, you know just  
17 completely out of it. One guy crawled underneath the tent. He probably  
18 saved his own life but he crawled underneath the tent. And he doesn't  
19 even remember it. You know but there is a lot of stuff like that. You know  
20 similar type behavior which now you know before nobody knew to go to  
21 the doctor but now these people are going to the doctor and finding that  
22 there is actual damage that you know that is being caused by this. People  
23 have burnt lungs just from the air being too hot things like that so ... you  
24 know we're looking at that. You had said something that's kind of  
25 intriguing you know just because of the nature of the case we are working  
26 but one of the theories in the case was that James Ray was trying to induce  
27 hyperthermia so that people would think that they are having an out of  
28 body experience.



1 PFANKUCH: Right.

2 DISKIN: You had mentioned that you got the impression that he thought that it was  
3 cool that you know Daniel was able to have this out of body experience  
4 and that's kind of concerning if he was trying to give people this out of  
5 body experience that Daniel received you know which we look at as  
6 hyperthermia and he ends up, you know people end up dying. You know  
7 that could be one of the elements of the crime.

8 PFANKUCH: Right.

9 DISKIN: You know I really don't have much of an opinion on whether or not he  
10 should be charged with a crime. I don't know. You know there ...

11 PFANKUCH: I mean I don't really have an opinion either detective I am just telling you  
12 what I feel.

13 DISKIN: Right.

14 PFANKUCH: You know? And what I experienced and that's all I can do. What happens  
15 outside of that, I mean ...

16 DISKIN: That's all we want, we just want to put together the facts and say here is  
17 the facts of the case, you know presented to you know hopefully a grand  
18 jury and they can you know determine, whether or not charges should be  
19 filed. I can see justification either way, you know he wasn't trying to kill  
20 anybody and nobody is saying that but he may have been trying to  
21 basically give people injuries so that they think that they have an out of  
22 body experience.

23 PFANKUCH: Right.

24 DISKIN: And that's concerning but you know Daniel and I got more about Daniel  
25 didn't talk a lot I mean he would give specific answers to specific  
26 questions but he didn't really.

27 PFANKUCH: Yeah that's Daniel.

28 DISKIN: He didn't going into a narrative to describe stuff.

1 PFANKUCH: Right.

2 DISKIN: But Mickey and other people did, and what they described you know

3 basically the same thing that everybody else is saying that, Daniel was just

4 a completely different person and you know they don't really from what I

5 remember from those interviews they don't see it as you know just a

6 spiritual thing but that you know there might be some injury there, some

7 permanent damage that that caused this. But what they were telling me

8 was that Daniel was, was you know had a six-figured income, everything

9 was going great, happy and then after this you know in just a few short

10 years he has got nothing.

11 PFANKUCH: Yeah.

12 DISKIN: Do you think that that's a result of the sweat lodge or was he kind of on a

13 downward spiral anyway?

14 PFANKUCH: No, I definitely think and I had this conversation with Daniel because and

15 of course he doesn't agree with me but I definitely think that sweat lodge

16 had a lot to do with a lot of different things, you know I mean we had

17 challenges in our relationship before that but who doesn't, right?

18 DISKIN: Right.

19 PFANKUCH: You know and I know afterwards it was just I just felt like you know he

20 had a really hard time getting a sense of direction of what he wanted to do

21 and stick with it and so I just you know there were choices and stuff there

22 that he made. That it's like wait a second, you know you, like for instance

23 like a year after that I moved up, not even a year in March of 2006, I

24 actually moved up here to Montana and Daniel would say well let's stay

25 for a year or what, I am going to stay down here because he had a great

26 job at Microns, you know it but I just was getting depressed, I was like I

27 can't stay here anymore in this big city, I need to, you know we have an

28 opportunity; we had bought property up here just like if we're going to do

1 this, we need to do this now. I said you have got an opportunity you can  
2 work in the same industry at Semi Tool. Anyway a long story short you  
3 know he eventually did but he ended up quitting and then he thought he  
4 would try a couple of different things that he was just never ever since that  
5 time been enable to follow through and that's not the person I met before  
6 that event. I mean Daniel is pretty goal oriented, he will set a goal and he  
7 will just do it but ever since that event it's just like he's just wishy-washy  
8 he doesn't want to do anything, he doesn't know what he wants to do and I  
9 just finally last year I was like I can't take this anymore, I said you don't,  
10 you know you are depressed, you don't do anything. You know I am  
11 working my ass off but you don't choose to go out and do anything, I  
12 don't know what to tell you so I think that part of the reason why we are  
13 divorced is definitely associated with that. Daniel does not agree with me  
14 but I don't know I mean if you talk to, you know I am still good friends  
15 with the family and everything else from you know they definitely have  
16 noticed a difference in him, you know in the last few years and they don't  
17 know a lot about that event just because we just chose not to share with  
18 them you know but they definitely noticed a difference in him.

19 DISKIN: Yeah, you know I don't know, I mean if there was damaged I don't know  
20 it can be fixed or I don't know that kind of stuff, but you know the first  
21 thing that I would like to see happen is just for him to go get a CAT scan  
22 or whatever I don't know what test they do to find damage like that but  
23 you know and just see if there is anything there. See if there is a reason  
24 that this happened other than this you know. You know, I got the  
25 impression that he kind of felt like you know he doesn't really have a  
26 reason to live, like he ...

27 PFANKUCH: Oh, yeah.

28 DISKIN: He just doesn't belong here, and I think he even said that that he just

1 doesn't belong here.

2 PFANKUCH: Yep. Yeah, several times.

3 DISKIN: That there maybe a lot of you know like him blaming himself for that or

4 him thinking that he is supposed to be this way or he was cheated out of

5 you know that he was going to a better place and you know the

6 paramedics brought him back and he was cheated out of going to that

7 other place. You know if he realizes that may be it wasn't spiritual and

8 this was an injury just like if you got in a car accident or anything else it

9 might be easier to deal with. But I don't know, anyway if you think of

10 anything that I didn't ask you that you think is important to the case, if you

11 can give me a call I would appreciate it.

12 PFANKUCH: Yeah absolutely. I am sorry, I had a hard time hearing your first name.

13 DISKIN: My first name is Ross, R-O-S-S. I have a cold so ...

14 PFANKUCH: Okay. And Ross, what's your last name again?

15 DISKIN: Diskin. D-I-S-K-I-N. And do you still keep in touch with people from the

16 sweat lodge in 2005? I mean I know Mickey and some of the others but ...

17 PFANKUCH: Mickey I do and not a lot, some of the people that were in the event they

18 are still, they still kind of hold onto James' stuff and I just have chosen not

19 to continue my study with him for different reasons. But I still kind of,

20 every so often like I have him on Facebook and stuff and I'll see like

21 Shane, not Shane, but Shaun and Jill Hank, I see them. Every now and

22 then I'll talk to them on Facebook or you know we keep in touch that way.

23 I actually haven't talked to them in probably in over a year but and then

24 Penny Boyd. I actually was in Arizona and in Scottsdale with my

25 boyfriend that week that that whole event happened and I had gotten some

26 emails from, you know I think it was Penny Boyd and that's how I knew

27 and then I jumped onto Facebook to see if I could find out anything and

28 then Penny was on there and I was communicating with her and I asked

1 her specifically because it wasn't in the email or anything I said was it the  
2 sweat lodge and she said yes and I was like hmm.

3 DISKIN: Were you surprised when you heard that people had died in the sweat  
4 lodge? Did that surprise you?

5 PFANKUCH: I don't know if surprise, I mean I definitely was shocked but I don't think  
6 I was surprised that that could have happened. Just because I know how  
7 much James was pushing it when we did it and like I said I'm surprised  
8 something hasn't happened sooner than now. But like I said I don't know  
9 how he has held that every year and you know and graduates of the events  
10 you know you can actually go back to the events and help facilitate and be  
11 like a volunteer there.

12 DISKIN: Yeah, the Dream Team.

13 PFANKUCH: Yeah the Dream Team and Daniel and I always felt that we would want to  
14 do that at one time but we just never did, which I am kind of glad now but  
15 no, I would say Detective, I'm not surprised just because I know that a lot  
16 of people did end up getting sick at the sweat lodge when Daniel and I had  
17 gone through it, you know what I mean and other people, and vomiting  
18 and you know overheating and dehydrated and all that stuff was going on  
19 so .... I am surprised no one died then because we were actually in a sweat  
20 lodge longer than these people. We were in the sweat lodge, I think  
21 Mickey and I had figured it out or he had calculated, it was over ... almost  
22 4 hours.

23 DISKIN: Yeah, that's a long time. Had you ever ... Did you ever feel any different  
24 or think that there might be any kind of damage or, I mean did you ever  
25 feel like that like after you got out of the sweat lodge?

26 PFANKUCH: You know after I got out of the sweat lodge I could definitely tell I was  
27 dehydrated and very overheated. You know and I know for a few days  
28 afterwards probably a good week I was just exhausted. Really, really

1 tired. I don't know if I have really experienced anything other than that. I  
2 mean I am a pretty healthy individual so and I listen to my body and I  
3 don't care, you know when James was really enforcing the fact that,  
4 people to stay in there and I just kind of went against the grain on that and  
5 a couple of other people did too and I went out, you know, I wasn't feeling  
6 good. I felt like I was going to pass out a couple of times there and a  
7 couple of times it actually scared me and so I finally made the decision I  
8 was just like I am going to go out and this is not worth it.

9 DISKIN: That was definitely the right decision.

10 PFANKUCH: Yeah.

11 DISKIN: What? Do you remember how many rounds there were?

12 PFANKUCH: Seven for the seven chakras.

13 DISKIN: And you know if it was about 4 hours and there were probably 30 minute  
14 rounds or more, is that correct?

15 PFANKUCH: Yeah that would be about right.

16 DISKIN: And when you left did James do anything to stop you? Did he say don't,  
17 don't go or anything?

18 PFANKUCH: Let me see. I don't think so. I did get in trouble because I, you are  
19 supposed to go I think you are supposed to go, I think, how are you  
20 supposed to go out? I think you're supposed to go clockwise out and I was  
21 just wanting to head for the you know the exit or the entrance so I actually  
22 started going off in the wrong direction and then I got called out on it and I  
23 had to go the opposite direction but no, yeah that was the only thing.

24 DISKIN: That was one of the hard parts of getting Kirby and James Shore and the  
25 ones that had died, you know, getting them help because people were still  
26 feeling like they had to show, obey the rules and go clockwise which made  
27 them go the long way instead of directly to get to them and things like  
28 that. But one of the other things, I can't remember if I got this from Daniel

1 but you said that he was kind of sitting across from you or the opposite  
2 direction from you?

3 PFANKUCH: Yep he was kind of yeah, and I forget the reason why, I don't know why  
4 we weren't sitting together because I assumed that we would be but we  
5 didn't. But yeah he was kind of sitting across from me and we were both  
6 back in the second row so we had actually, we were the first group to go in  
7 and then they brought in the second group.

8 DISKIN: And where was he sitting in relation to the door?

9 PFANKUCH: To the door, he had to be, so you enter in and you are looking straight  
10 back into the lodge and you kind of then do like a half circle or whatever  
11 when you look through the door. So he would have been on, as you are  
12 looking in, he would have been on the right hand side maybe like three  
13 quarters of the way back.

14 DISKIN: Okay. So, not quite opposite the door but kind of that general area?

15 PFANKUCH: Right and I was almost in the exact same position except on the left hand  
16 side in that row. And actually you know what I was actually sitting next to  
17 ... Marilyn, no ... the gal that died. What's her name again?

18 DISKIN: Liz Neuman.

19 PFANKUCH: I was actually sitting right next to Liz that year. I just remembered that.

20 DISKIN: Yeah she had gone several years in a row.

21 PFANKUCH: Yep. Yep, she was ... I have been to lot of events with her.

22 DISKIN: When you were in the lodge did anybody have to be drug out of the lodge,  
23 did anyone pass out and people were dragging them out?

24 PFANKUCH: I don't know if people passed out but I do know that there were  
25 individuals that were definitely being helped out.

26 DISKIN: Okay. Well I can't think of anymore questions right now but if you think  
27 of anything that you think could be important, please give us a call.

28 PFANKUCH: Alright Detective, I definitely will.

1 DISKIN: Okay. And you know we've got, I've got a list that I got from Angel  
2 Valley of all the 2005 participants and some of their contact information  
3 has changed over the years so we haven't been able to get a hold of them.  
4 So as you talk to people, if you still communicate with them, if you could  
5 just kind of spread the word that we would definitely like to talk to  
6 everybody who was there in 2005.

7 PFANKUCH: Okay, yeah for sure. I don't know have you guys talked to Jill and Shawn  
8 Hank?

9 DISKIN: Let me check. Nah I interviewed Shawn Hank and you said Jill?

10 PFANKUCH: Jill is his wife, yeah.

11 DISKIN: Is it Jill Simpson?

12 PFANKUCH: No, that would ... Jill was there yeah.

13 DISKIN: Different Jill?

14 PFANKUCH: Yeah, no. Jill and Shawn are married. I don't even know her maiden  
15 name. Jill Simpson was there but that's not her last name anymore I think  
16 it's like Hampson, starts with an "H".

17 DISKIN: Yeah I can't remember either but you know we have attempted contact  
18 with everybody there but there's a few people that just ...

19 PFANKUCH: Well I wouldn't be surprised if some of them won't talk to you.

20 DISKIN: We are seeing that. There was a Marilyn Moss apparently that has a lot of  
21 information about the events.

22 PFANKUCH: Oh yeah. She won't talk to you guys?

23 PFANKUCH: No she did, but there's a lot of people that won't. They just don't return  
24 the phone call so you know we don't know if they are not willing to talk or  
25 what, you know. But yeah we have noticed that some people you know  
26 kind of instead of looking at it kind of neutral, they kind of take sides and  
27 say well we are not talking to them because they are out to get James Ray  
28 which isn't true, we are just trying to find out the facts.



1 PFANKUCH: Yeah. I actually wouldn't be surprised if Marilyn wasn't willing to talk to  
2 you. She went up into lot of different things but I do know that she did talk  
3 to Daniel because Daniel talked to me afterwards that and had shared that  
4 Marilyn had gotten in contact with him just to see how he was doing you  
5 know. It sparked up some interest because everyone that was at that event  
6 knew what Daniel had experienced so I am sure that there were quite a  
7 few people that wanted to talk to Daniel about it you know.

8 DISKIN: Right.

9 PFANKUCH: But I know Marilyn, she's a sweet gal. She actually has been to a lot of  
10 James's events and that's one thing that was interesting to me because  
11 Daniel had told me that even Marilyn had had a couple of confrontations  
12 with James as well but I don't know where she is at as far as like if she  
13 still continues to go to his events and is still a diehard. There is a few of  
14 them that are real diehards and will probably do everything they can to  
15 protect James, they are just not open.

16 DISKIN: It seems like those people that through the years have been his biggest  
17 supporters or his most loyal staff members, they are the ones that are the  
18 most eager to talk to us it seems like except for the current ones, the  
19 current staff members that are really close to him. But most of even the  
20 current staff members have talked to us and been extremely cooperative,  
21 they're not, they don't work for him now because nobody does but they  
22 were very cooperative and a lot of them resigned over this or the suicide  
23 event.

24 PFANKUCH: Really?

25 DISKIN: Apparently he became to where he wasn't as approachable as he once was  
26 where you know I guess you just don't tell him when something isn't  
27 right.

28 PFANKUCH: Yeah I had kind of heard through the grapevine too that that had

1                   happened. So I didn't realize that there was a suicide event or suicide thing  
2                   at was it Creating Wealth here not too long ago.  
3   DISKIN           It was the one in San Diego where you dress up like homeless people.  
4   PFANKUCH:       Yep, Creating Absolute Wealth.  
5   DISKIN:          Right.  
6   PFANKUCH:       I guess someone was telling me though the year that we did it something  
7                   happened to a person and I didn't know that.  
8   DISKIN:          I didn't know that either.  
9   PFANKUCH:       But I could be off guard to maybe it wasn't but I had thought that someone  
10                   had told me this. Something had happened to a gal the year that Daniel  
11                   and I had done it and it was that same year 2005, I don't know though, I  
12                   could be wrong detective.  
13   DISKIN:          Yeah I don't know. You know I wouldn't be surprised, we have heard a  
14                   lot of different things going wrong at different events.  
15   PFANKUCH:       Yeah.  
16   DISKIN:          But anyway I will let you go and I do appreciate you calling me back.  
17   PFANKUCH:       No, my pleasure.  
18   DISKIN:          Please feel free to give me a call if you have any questions or anymore  
19                   information.  
20   PFANKUCH        Alright sounds good detective, good luck.  
21   DISKIN:          Alright thanks.  
22   PFANKUCH:        Alright bye-bye.  
23  
24                   END OF INTERVIEW.  
25  
26                   .  
27  
28